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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES. 1905.

OCTOBER TERM, ~~1902.~~ ~~1903.~~ ~~1904.~~

No. ~~323.~~ 176.

JOSE ANTONIO FERNANDEZ Y PEREZ, PLAINTIFF IN ERROR,

vs.

JOSE PEREZ Y FERNANDEZ.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF PORTO RICO.

FILED MAY 5, 1902.

(18,527.)

(18,527.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 323.

JOSE ANTONIO FERNANDEZ Y PEREZ, PLAINTIFF IN ERROR,

vs.

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IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF PORTO RICO.

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1 THE UNITED STATES OF AMERICA, } ss:
District of Porto Rico, }

At a stated term of the district court of the United States for Porto Rico, within and for the district aforesaid, begun and held at the court rooms in the city of Mayaguez, on the first Monday of December, being the second day of that month in the year of our Lord one thousand nine hundred and one and of the Independence of the United States of America, the one hundred and twenty-sixth.

Present: The Honorable William H. Holt, judge.

Among the proceedings had were the following, to wit:—

JOSE PEREZ Y FERNANDEZ, Plaintiff,
vs.
JOSE ANTONIO FERNANDEZ Y PEREZ and RAFAEL DIAZ AGUERRIA, Defendants. } Common Law.

Be it remembered, that heretofore, to wit, on the 18th day of November in the year of our Lord one thousand nine hundred and one came the plaintiff by his attorney and filed a declaration in this cause, which said declaration is clothed in the words and figures following, to wit:

In the District Court of the United States for Porto Rico, Sitting at Mayaguez, December Term, 1901.

JOSE PEREZ Y FERNANDEZ, Plaintiff,
vs.
JOSE ANTONIO FERNANDEZ Y PEREZ and Rafael Diaz Aguerria, Defendants. } Declaration in Trespass on the Case for Wrongful Attachment.

Jose Perez y Fernandez, plaintiff, a subject of the King of Spain and a resident of Porto Rico, complains of Jose Antonio Fernandez y Perez and Rafael Diaz Aguerria, subjects also of the King of Spain, and residents of Porto Rico, of the plea of trespass on the case, for that,

Whereas, plaintiff on the 4th day of January, 1900, and for several years prior thereto was engaged as a merchant doing a general commission business, in the city of Mayaguez, Porto Rico,
2 under the firm name and style of Perez, Ramos & Company, of which firm he was the principal owner, and as such was engaged in expensive and important business transactions throughout Porto Rico and between Porto Rico and foreign countries; was the owner of the warehouse and lot in which said business was conducted in Mayaguez as well as a brick house situated at number 10, Calle Peral, Ponce, and many other valuable properties in the said *in the said* district as aforesaid; and enjoyed individually and as a member of the said co-partnership or society of Perez, Ramos

& Company aforesaid, a large credit and good standing in the commerce of Porto Rico and foreign countries as aforesaid.

Plaintiff says that, notwithstanding this, the said defendants, Jose Antonio Perez, for himself and as attorney in fact and agent of and for defendant Rafael Diaz Aguerria, who was a party plaintiff to said suit, and who authorized and ratified all of the acts hereinafter mentioned, did, on or about the 4th day of January, 1900, as aforesaid, in the United States provisional court for the department of Porto Rico, at Mayaguez aforesaid, falsely and maliciously and without reasonable or probable cause make an affidavit for attachment against the goods and property of plaintiff, and falsely and maliciously and without reasonable or probable cause instituted in the said court a suit for the recovery of fifteen thousand (15000) pesos, Porto Rican currency, against the plaintiff, stating, as a ground for the said attachment that the said plaintiff in the said attachment suit had a good cause of action, therein, and that the said defendant, Jose Antonio Fernandez y Perez, had reason to believe that the defendant therein, plaintiff in this case, would fraudulently part with or sell his property before judgment could be recovered against him so that the judgment could not be satisfied out of said property; whereupon, upon the filing of said wrongful affidavit and the wrongful institution of such suit as aforesaid, the defendants herein wrongfully, vexatiously, maliciously and without probable cause, caused an attachment to issue against the store and warehouse and the lot upon which the same was situated and belonging to plaintiff and his said company, as aforesaid, and in which he was
3 conducting his business as aforesaid in the city of Mayaguez, and also against the brick house and the lot belonging to plaintiff situated at number 10 Calle Feral, Ponce, all of said property being of great value, and situated in Porto Rico.

Plaintiff says that the said writ of attachment as sued out in the said United States provisional court for the department of Porto Rico was levied by the marshal thereof, upon the properties aforesaid, all of which exceeded in value many times the amount of the debt for the collection whereof the said attachment was sued out. And the plaintiff says that the grounds of attachment alleged in the said affidavit did not exist and that defendants herein did not have any probable cause to believe that the said grounds, as alleged, did exist, and plaintiff alleges that the said action was wrongfully and maliciously instituted against plaintiff without probable cause.

Plaintiff alleges that before the commencement of this action the said attachment proceeding and the suit instituted by the defendants herein had been judicially investigated by the district court of the United States for Porto Rico and on or about the fourth day of June, 1901, the said district court of the United States for Porto Rico decreed that the said suit and attachment proceedings were not properly and legally instituted and determined the same against the defendants herein and in favor of the plaintiff herein, wherefore, plaintiff claims damages for that the defendant, under color of said attachment entered the plaintiff's warehouse and the properties above described, and wrongfully and maliciously interfered

with and greatly injured plaintiff's business and the business of the said firm of which he was a member, greatly mutilating, disarranging and injuring plaintiff's stock of goods, endangering and destroying his business and credit as a merchant, by which he was compelled to retire from business from the said firm and lose a large amount of money, and the said property as attached and the stock of goods owned by plaintiff were greatly depreciated in value, and plaintiff was damaged in the following sums, to wit:

4

Loss of profits during pendency of said attachment suit	$3500.00
Travelling expenses necessarily incurred in defending such suit	500.00
Counsel fees necessarily incurred in the defense of said attachment and suit	1000.00
Injury to business and credit directly resulting from the said attachment proceeding and suit	15000.00

All of which resulted to the damage of plaintiff in the sum of twenty thousand dollars ($20,000.00), for which he brings this suit.

(Signed) FRANCIS H. DEXTER,
Attorney for Plaintiff.
J. HERNANDEZ,
Attorney for Plaintiff.

(Indorsement:) Mayaguez, Common law, $70. Jose Perez y Fernandez *vs.* Jose Antonio Fernandez y Perez and Rafael Diaz Aguerria. Declaration. Filed clerk's office United States district court November 18, 1901. (Signed) Ricardo Nadal, clerk of the court.

And afterwards, to wit on the same day came the plaintiff by his attorney, and filed in the clerk's office of the court aforesaid his certain præcipe in the said case, which said præcipe is clothed in the words and figures following, to wit:

5 (*Præcipe.*)

In the District Court of the United States for Porto Rico, Sitting at Mayaguez, December Term, 1901.

JOSE PEREZ Y FERNANDEZ, Plaintiff, *vs.* JOSE ANTONIO FERNANDEZ Y PEREZ and Rafael Diaz Aguerria, Defendants.	Declaration in Trespass on the Case for Wrongful Attachment.

To the clerk of the court:

Please issue a writ of summons against Jose Antonio Fernandez y Perez, and Rafael Diaz Aguerria, residents of your district and subjects of the King of Spain, upon the complaint of Jose Perez y Fernandez, who sues in an action of trespass on the case to recover

damages in the sum — twenty thousand dollars against the said defendants, returnable to the December term of this court at Mayaguez.

(Signed) F. H. DEXTER,
Attorney for Plaintiff.

J. HERNANDEZ,
Att'y for Pl'ff.

(Indorsement:) No. 70 C. L. December term, 1901. Mayaguez. In the district court of the United States for Porto Rico. Jose Perez y Fernandez, plaintiff, *vs.* Jose Antonio Fernandez y Perez and Rafael Diaz Aguerria, defendabts. Filed clerk's office United States district court. November 18 1901 (Signed) Ricardo Nadal clerk of the court.

And thereupon there was issued out of the clerk's office aforesaid our writ of summons in this case directed to the marshal of this district and against the said defendants, which said summons is clothed in the words and figures following, to wit:

In the District Court of the United States for Porto Rico, Sitting at Mayaguez.

José Perez y Fernandez

6 JOSÉ PERIZ Y FERNANDEZ
vs.
JOSÉ ANTONIO FERNANDEZ Y PEREZ & RAFAEL DIAZ Aguerria. } Summons.

THE UNITED STATES OF AMERICA, *District of Porto Rico,* } *ss:*

The President of the United States of America to the marshal of the district court of the United States for Porto Rico:

You are hereby commanded to summon José Antonio Fernandez y Perez and Rafael Diaz Aguerria to appear before the above named district court of the United States for Porto Rico in the court room thereof, at the session of such court to be held in the city of Mayaguez, Porto Rico, beginning Monday, the second day of December next, 1901, and it being the regular December term of said court at the said city of Mayaguez to answer to the complaint of José Perez y Fernandez, all parties being subjects of the King of Spain, and residents in your district, in or near the said city of Mayaguez, in a common law suit of trespass on the case in which plaintiff demands twenty thousand dollars damages. Failing to so appear judgment by default will be entered against said defendants.

Witness, the Honorable Wm. H. Holt, judge of the said court and the seal thereof, this 18th day of November, 1901, and the 126th of our Independence at Mayaguez Porto Rico.

(Signed) RICARDO NADAL, *Clerk.*

Endorsement thereon: C. L. # 70. José Perez y Fernandez *vs.* José Antonio Fernandez y Perez, *et al.* Original summons Filed clerk's office United States district court November 18th, 1901. (Signed) Ricardo Nadal clerk of the court.

Marshal's fees, one service, $2.00.

7 And afterwards to*m* wit, on the same day, came the marshal of said district to whom the said writ was in form aforesaid directed and returned the same into the clerk's office of the court aforesaid with his proceedings thereon attached thereto clothed in the words and figures following, to wit:

DISTRICT OF PORTO RICO, *ss:*

I hereby certify and return, that on the 18th day of November, 1901, I received the within writ and after diligent search, I am unable to find the within named defendant Rafael Diaz Agueeria within my district.

(Signed) E. S. WILSON,
U. S. Marshal,
By WILHELM LUTZ,
Deputy U. S. Marshal.

Return on Service of Writ.

UNITED STATES OF AMERICA, }
District of Porto Rico, } *ss:*

I hereby certify and return that I served the annexed writ on the therein named José Antonio Fernandez y Perez by *ah*nding to and leaving a true and correct copy thereof with José Antonio Fernandez y Perez personally at Mayaguez in said district on the 18th day of November, A. D. 1901.

(Signed) E. S. WILSON,
U. S. Marshal,
By WILHELM LUTZ,
U. S. Deputy Marshal.

And afterwards, to wit, on the second day of December in the year last aforesaid came one of the defendants in this case by his attorneys and filed in the clerk's office of the court aforesaid, his certain demurrer in this case, which said demurrer is clothed in the words and figures following, to wit:

District Court of the United States in and for the District of Porto Rico.

JOSÉ PEREZ Y FERNANDEZ, Plaintiff,
versus
JOSÉ ANTONIO FERNANDEZ Y PEREZ, RAFAEL DIAZ AGUERRIA, Defendants.

Demurrer.

And the said defendant, José Antonio Fernandez, by his attorneys Horton and Cornwell, comes and defends the wrong and in-
8 jury, when, etc., and says that the plaintiff's said declaration and the matters and things therein contained in manner and form as the same *or* above set forth are not sufficient in law for him the said plaintiff to maintain his aforesaid action against this defendant and that he the said defendant is not bound by law of the land to answer same, and this he is ready to verify: wherefore for want of a sufficient declaration in this behalf the said defendant prays judgment, etc.

And the said defendant, Jose Antonio Fernandez, states and shows to the court the following causes of demurrer to the said declaration, that is to say, that it shows on the face of the said declaration, that defendant, Jose Antonio Fernandez y Perez, was acting as the duly authorized agent of the said Rafael Aguerria and was neither principal nor party plaintiff to the said action to recover fifteen thousand pesos against Jose Perez y Fernandez; and also that the declaration is in other respects uncertain, informal, and insufficient, etc.

(Signed) HORTON & CORNWELL,
Attorneys for Defendant Jose Antonio Fernandez y Perez.

(Indorsement:) Common law #70 Jose Perez y Fernandez *vs.* Jose Antonio Fernandez y Perez and Rafael Diaz Aguerria Demurrer. Filed clerk's office United States district court. December 2nd, 1901 (Signed) Ricardo Nadal, clerk of the court by H. H. Scoville, D. C. Horton & Cornwell attorneys for defendant Jose Antonio Fernandez.

And afterwards to wit, on the 3d day of December, A. D., 1901 an entry was made upon the journal of the said court in said cause which said entry is clothed in the words and figures following, to wit:

9 PEREZ Y FERNANDEZ *vs.* FERNANDEZ Y PEREZ. } C. L. #70.

Now comes attorney for the defendant and presents demurrer to the declaration which is submitted.

And afterwards to wit, on the 6th. day of December, A. D., 1901, an entry was made upon the journal of said court in said cause, which said entry is clothed in the words and figure- following, to wit:

PEREZ Y FERNANDEZ
vs.
FERNANDEZ Y PEREZ ET AL. } C. L. #70.

Demurrer to declaration is overruled.

And afterw-rds, to wit, on the 7th. day of December in the year last aforesaid came one of the defendants in this cause by his attorneys and filed in the clerk's office of the court aforesaid, his certain plea in this case, which said plea is clothed in the words and figures following, to wit:

District Court of the United States in and for the District of Porto Rico.

JOSÉ PEREZ Y FERNANDEZ, Plaintiff,
vs.
JOSÉ ANTONIO F-RNANDEZ Y PEREZ, RAFAEL DIAZ AGUERRIA, Defendants.

Plea, Not Guilty.

And the said defendant, José Antonio Fernandez, by Horton and Cornwell, his attorneys, comes and defends the wrong and injury, when, etc., and says that he is not guilty of the premises above laid, to his charge in manner and form as the said José Perez y Fernandez hath above complained, and of this the said José Antonio Fernandez y Perez puts himself on the country.

(Signed) HORTON AND CORNWELL,
Attorneys for Defendant José Antonio Fernandez y Perez.

"Endorsement:" Common law #70 José Perez y Fernandez plaintiff *vs.* José Antonio Fernandez y Perez Rafael Diaz Aguerria defendants. Plea, not guilty of. José Antonio Fernandez y Perez, defendant F. H. Dexter, attorney for plaintiff. Horton & Cornwell, attorneys for defendant José Antonio Fernandez y Perez. Filed clerk's office United States district court. December 7, 1901. (Signed) Ricardo Nadal clerk of court by H. H. Scoville, D. C.

And afterwards to wit, on the same day came the plaintiff by his attorney, and filed in the clerk's office of the court aforesaid his certain joinder of issue which said joinder of issue is clothed in the words and figures following, to wit:

In the District Court of the United States for Porto —, Sitting at Mayaguez, December Term, 1901.

JOSE PEREZ Y FERNANDEZ
vs.
JOSE ANTONIO FERNANDEZ Y PEREZ.

Joinder of Issue.

Now comes plaintiff above named and as to the plea of defendant herein pleaded in which he puts himself upon the country, plaintiff doth the like.

(Signed) F. H. DEXTER,
Att'y for Plaintiff.

Jose Perez y Fernandez being duly sworn upon his oath says that the facts and allegations above set forth are true and that he affirms the same.

(Signed) JOSE PEREZ.

Subscribed and sworn to before me this 6th, day of December 1901.

(Signed) H. H. SCOVILLE, *D. C.*

(Indorsement on joinder of issue:) Jose Perez y Fernandez *vs.* Jose Antonio Fernandez y Perez Joinder of issue Filed clerk's office United States district court De. 7th, 19–1. (Signed) Ricardo Nadal, clerk of the court By H. H. Scoville, D. C.

11 And afterwards, to wit, on the 9th day of December in the year last aforesaid, came the plaintiff in this case by his attorney and filed in the clerk's office of the court aforesaid his certain motion in this case which said motion is clothed in the words and figures following, to wit;

In the District Court of the United States for Porto Rico, Sitting at Mayaguez, December Term, 1901.

JOSE PEREZ
vs.
JOSE ANTONIO FERNANDEZ.

Motion to Amend Declaration.

Now comes plaintiff and moves the court for an order allowing the amendment of the declaration herein by substituting the word "Mayaguez" in place of the word "Ponce" where the same appears on pages "1" and "3" of said declaration—said amendment being formal and to correct a clerical error.

(Signed) F. H. DEXTER,
Attorney for Plaintiff.

(Indorsement on motion to amend:) C. L. # 70. Jose Perez *vs.* Jose Antonio Fernandez. Motion to amend declaration. Filed clerk's office United States district court Dec. 9th, 1901 (Signed) Ricardo Nadal, clerk of the court By H. H. Scoville, D. C.

And afterwards to wit, on the same day last aforesaid an entry was made on the journal of this court in said cause, which entry is clothed in words and figures as follows, to wit:

PEREZ Y FERNANDEZ
vs.
FERNANDEZ Y PEREZ. } C. L. 70.

Now comes the attorney for the plaintiff in the above entitled cause and presents a motion to amend the declaration, and upon hearing the attorney for the defense in opposition thereto, the motion is granted. The aforesaid amendment reads as follows: "By leave of, court first had this 9th day of December, 1901, plaintiff is permitted to amend his declaration by substituting the word 'Mayaguez' in place of the word 'Ponce' where the latter occurs in page 1 and page 3 of said declaration and the said declaration will be considered and read as so amended."

12 And afterwards, to wit, on the 11th day of December, A. D. 1901, an entry was made upon the journal of said court in said cause which said entry is clothed in the words and figures following, to wit:

PEREZ Y FERNANDEZ
vs.
FERNANDEZ Y PEREZ. } C. L. 70.

This cause coming up for hearing both parties by their attorneys answer ready. The regular panel of jurors being exhausted the marshal is ordered to summon from among the bystanders one good and honest man to serve on the jury.

Whereupon the marshal summoned A. J. Wythe who qualified as a juror. The jury as elected and sworn was composed of the following named persons, to wit: Gerardo Castello, Alfredo Saliva, Alfredo Bravo, Sandalio Delgado, Jose Garcia, Felix Vidal, Henry Dick, J. J. Jimenez, Ulises Monagas, Adolfo Camps, Florencio Vera, and A. J. Wythe, who heard a part of the testimony.

And afterwards, to wit, on the 12th day of December, A. D. 1901, the plaintiff herein, by his attorney, filed a certain document as evidence, which said document is in the words and figures following, to wit:

Declaration.

In the United States Provisional Court for the Department of Porto Rico.

RAFAEL DIAZ AGUERIA, Executor Last Will and Testament — Claudio Barro, *vs.* JOSE PEREZ Y FERNANDEZ.	Assumpsit. Damages, $5,000.00.

Rafael Diaz Agueria, citizen of Spain, plaintiff executor of last will and testament of Claudio Barro, citizen of Spain, deceased, complains of José Perez y Fernandez, defendant, of a plea of trespass on the case on promisses. For that whereas in the lifetime
13 of the said Claudio Barro, to wit, on the 27th day of August in the year 1897 in the city of Colloto, province of Oviedo, Spain, the defendant made his promissory note and delivered the same to the said Claudio Barro thereby then and there promissed to pay on the 31st day of December A. D. 1897 the sum of $1000. Thereby then and there promissed to pay on the 31st day of December A. D. 1898 the sum of $1420. pesos. Thereby *by* then and there promissed to pay on the 31st day of December A. D. 1898 the sum of $1360 pesos in the city of Mayaguez, Puerto Rico, for value received by means whereof the defendant then and there at the time and place first aforesaid became liable to pay to the said Claudio Barro the said sums of money in the said promissory notes specified according to the tenor and effect thereof and being so liable the defendant in consideration thereof then and there promissed the said Claudio Barro to pay him the said sums of moneys according to the tenor and effect of the said notes. For money before that time lent by Claudio Barro to the defendant at his request. For money before that time paid and expended by Claudio Barro for the use of the defendant at his request. For goods, chattels and effects before that time sold and delivered by Claudio Barro to the defendant at his request.

Yet although the aforesaid day of payments in the said notes has elapsed the defendant has not paid any of the aforesaid amounts of said note or any part of them either to the said Claudio Barro in his life time or to the plaintiff since the death of the said Claudio Barro, nor has the defendant though thereto requested paid the several other sums of money above specified or any or either of them or any part thereof either to the said Claudio Barro in his life time or to the plaintiff since the death of the said Claudio Barro but to pay the same the defendant refuses to the damage of the plaintiff as executor as aforesaid of $5000.00 and therefore he brings his suit.

(Signed) HORTON AND CORNWELL,
Attorneys for Plaintiff.

14 Endorsement: Rafael Diaz Agueria, executor of last will of Claudio Barro *vs.* Jpsé Perez y Fernandez. Declaration in

assumpsit Damages $5000.00. Filed clerk's office United States provisional court January 2nd, 1900. (Signed) Robert Alexander, captain 14th infantry, clerk of the court by Ricardo Nadal deputy clerk.

U. S. district court for Porto Rico, December term, 1901, Mayaguez. Jose Perez y Fernandez *vs.* Jose Antonio Fernandez y Perez. Ex-ibit No. 1 for Plaintiff.

And afterwards, to wit, on the last day aforesaid there was introduced by the plaintiff herein by his attorney as evidence a certain Exhibit No. 2, which said exhibit is in the words and figures following, to wit:

In the United States Provisional Court for the Department of Porto Rico.

Affidavit for Attachment.

José Antonio Fernandez makes oath and says he is power of attorney of Rafael Diaz Agueria and that Rafael Diaz Agueria is the executo- of the last will and testament of Claudio Barro and that Rafael Diaz Agueria has a good cause of action therein and that affiant has reason to believe that the defendant intends to and will fraudulently part with or conceal his property before judgment can be recovered against him, so that said judgment cannot be satisfied out of said property.

(Signed) JOSE ANTONIO FERNANDEZ.

Subscribed and sworn to before me the 2nd day of January 1900 A. D. at Mayaguez, P. R.

(Signed) ROBERT ALEXANDER,
Captain 14th Infantry, Clerk United States Provisional —,
By RICARDO NADAL,
Deputy Clerk.

15 Endorsement: Affidavit Affiant José Antonio Fernandez to procure attachment on the property of Jose Perez Fernandez. Assumpsit. Damages $5000.00. Filed in the U. S. provisional court, January 2nd, 1900. (Signed) Robert Alexander captain 14th infantry, clerk of the court by Ricardo Nadal deputy clerk of the court.

U. S. district court for Porto Rico, December 10th, 1901, Mayaguez. José Perez Fernandez *vs.* Jose Antonio Fernandez y Perez. C. L. 70. Ex-ibit 2, for Plaintiff.

And afterwards to wit on the same day last aforesaid there was introduced as evidence by plaintiff herein a certain Exhibit No. 3, which exhibit is in the words and figures following, to wit:

In the United States Provisional Court for the Department of Porto Rico.

RAFAEL DIAZ AGUERIA
vs.
JOSÉ PEREZ Y FERNANDEZ. } Affidavit for Attachment.

José Antonio Fernandez makes oath and says — power of attorney — Rafael Diaz Agueria and that Rafael Diaz Agueria citizen of Spain is executor of the last will and testament of Claudio Barro, deceased, who was a citizen of Spain and that José Perez y Fernandez is indebted to the estate of the late Claudio Barro in the sum of $15000 pesos after allowing all just credits and set-offs for promissory notes made and signed and delivered by José Perez y Fernandez to the late Claudio Barro for full value received and that the said José Perez y Fernandez is about to so fraudulently conceal, dispose of or mortgage his property, so as to hinder or delay his creditors.

(Signed) JOSE ANTONIO FERNANDEZ.

Subscribed and sworn to before me this 8th day of January
16 A. D. 1900, at Mayaguez, P. R.

(Signed) ROBERT ALEXANDER,
Captain 14th Infantry, Clerk U. S. Provisional Court.
By RICARDO NADAL,
Deputy Clerk.

Endorsement: Affidavit. Jose Antonio Fernandez, for attachment on José Perez y Fernandez' property for $15000 pesos. Filed clerk's office U. S. provisional court, January 8th, 1900. (Signed) Robert Alexander captain 14th infantry, clerk of the court, by Ricardo Nadal deputy clerk.

U. S. district court for Porto Rico, December, 1901, term Mayaguez. Jose Perez y Fernandez *vs.* Jose Antonio F. y Perez. C. L. 70. Exhibit 3 for Plaintiff.

And afterwards, to wit, on the same day last aforesaid there was introduced as evidence by plaintiff herein in this cause, a certain Exhibit No. 4. which said exhibit is in the words and figures following, to wit:

The President of the United States of America to marshal of the United States provisional court for the department of Porto Rico, Greeting:

Whereas Jose Antonio Fernandez, power of attorney for Rafael Diaz Agueria has this day filed the necessary affidavit in an action on assumpsit, wherein he demands the sum of $5000.00 (five thousand dollars) to procure a writ of attachment against the lands and tenements, goods, chattels, and effects of José Perez y Fernandez which may be found in this department,

Therefore, you are hereby commanded to levy upon and take possession of the lands and tenements, goods, chattels and effects of José Perez y Fernandez not excepted from taxation which may be

found in the department of Porto Rico, or so much thereof as will satisfy the said claim of $5000.00 and the cost of this action
17 and make return of your doings hereon, on or before the 13th day of January A. D. 1900 and therein fail not.

Witness: George W. Davis, brigadier general, U. S. V. commanding the department aforesaid and the seal of this court at Mayaguez, P. R. this 2nd day of January A. D. 1900.

(Signed) ROBERT ALEXANDER,
[SEAL.] *Captain 14th Infantry, Clerk U. S. Provisional Court,*
By RICARDO NADAL,
Deputy Clerk.

Endorsement.

Marshal's Return.

Received this writ on the 2nd day of January 1900 and served the same on the 4th day of January 1900 by attaching the two story brick and stone house of No. 10 Peral street, Mayaguez and posting the notice thereof in conspicuous place, said property belonging to Jose Perez y Fernandez.

This at Mayaguez, P. R.

(Signed) S. C. BOTHWELL,
U. S. Marshal,
By WILHELM LUTZ,
Deputy Marshal.

Fees.

Service	$2.00
Posting notice	1.00

Filed clerk's office U. S. provisional court 4th of January 1900.

ROBERT ALEXANDER,
Captain 14th Infantry, Clerk of the Court,
(Signed) By RICARDO NADAL,
Deputy Clerk.

U. S. district court of Porto Rico, December term, 1901, Mayaguez. Jose Perez y Fernandez *vs.* Jose Antonio y Perez. C. L. 70. Exhibit 4 for Plaintiff.

And afterwards, to wit, on the same day last aforesaid, there was introduced as evidence by plaintiff herein a certain Exhibit No. 5, which said exhibit is in the words and figures following, to wit:

18 *Notice.*

To whom it may concern:

You are hereby notified that under and by virtue of a writ of attachment issued out of the U. S. provisional court for the department of Porto Rico, dated the 4th day of January A. D. 1900, in a suit pending in the said court in which Rafael Diaz Agueria is

plaintiff and José Perez y Fernandez, defendant, and to me directed and delivered, I have this day attached and levied upon certain real estate described as follows: One brick house situated on Feral street No. 10 in the city of Mayaguez, with its lot, bound on the right by Minerva street, on the left by the house of Manuel Pinillo, in rear by the property of Silvany Martinez and Carlos Cordero as the property of said defendant.

This notice is in compliance with the rule of said court requiring notice of such levy to be posted upon the property attached dated this 4th day of January A. D. 1900.

S. C. BOTHWELL,
Marshal U. S. Provisional Court for Dep. of P. R.,
(Signed) By WILHELM LUTS,
Deputy Marshal.

I, Samuel C. Bothwell marshal as aforesaid do hereby certify, that the aforegoing is a true copy of the notice of attachment signed by me according to rule 14 of the said court; and that said notice was duly posted by me in a conspicuous place upon the attached property on the 4th day of January A. D. 1900.

Witness my hand at Mayaguez, Puerto Rico, this 4th day of January A. D. 1900.

S. C. BOTHWELL,
Marshal U. S. Provisional Court for Dept. of P. R.
(Signed) By WILHELM LUTZ,
Deputy Marshal.

Endorsement: C. L. No. 11. Notice of attachment and certificate thereof filed Clerk's office U. S. provisional court 4th of January 1900 Robert Alexander captain 14th infantry, clerk of the court (Signed) by Ricardo Nadal, deputy clerk.

10 U. S. district court for Porto Rico, December 10th, 1901, Mayaguez. José Perez y Fernandez vs. Jose Antonio Fernandez y Perez. C. L. 70. Exhibit 5 for Plaintiff.

And afterwards, to wit, on the same day last aforesaid there was introduced as evidence by plaintiff herein a certain Exhibit No. 6, which said exhibit is in the words and figures following, to wit:

RAFAEL DIAZ AGUER-IA, Executor Last Will and Testament of Claudio Barro, Deceased,
vs.
JOSE PEREZ Y FERNANDEZ.

The President of the United States of America to marshal of said court, Greeting:

You are hereby commanded to summon José Perez y Fernandez, residing in Mayaguez to be and appear before the U. S. provisional court for the department of Puerto Rico at Mayaguez, P. R., on or before the 13th say of January A. D. 1900, then and there to answer in an action on assumpsit, damages $5000.00

Failing to so appear, judgment will be entered against the said José Perez y Fernandez, by default.

Witness: George W. Davis, brigadier general, U. S. V. commanding the department aforesaid, and the seal of this court, at Mayaguez, P. R. this 2nd day of January, A. D. 1900.

ROBERT ALEXANDER,
[SEAL.] *Captain 14th Infantry, Clerk U. S. Provisional Court.*
(Signed) By RICARDO NADAL,
Deputy Clerk.

Endorsement.

Marshal's Return.

Received this writ on the 10th day of January 1900 and served the same on the 10th day of January 1900 by delivering a true copy thereof to José Perez y Fernandez the within named person This at San Juan, P. R.

SAMUEL C. BOTHWELL,
U. S. Marshal, San Juan, P. R.
(Signed) JAMES LAWRENCE,
Deputy Marshal.

Service: Fees $2.00.

20 C. L. 11.

Summons filed clerk's office United States provisional court 13th January, 1900.

ROBERT ALEXANDER,
Captain 14th Infantry, Clerk of the Court,
(Signed) By RICARDO NADAL,
Deputy Clerk.

U. S. district court for Porto Rico December 1901, term Mayaguez. Jose Perez y Fernandez *vs.* Jose Antonio Fernandez y Perez. C. L. 70. Exhibit 6 for Plaintiff.

And afterwards, to wit, on the same day last aforesaid there was introduced as evidence a certain Exhibit No. 7 which said exhibit is in the words and figures following, to wit:

Rules United States Provisional Court, Department of Porto Rico, 1899.

Proceedings at law.

Rule 17. All suits of civil nature, other than those in equity and admiralty, shall be begun by summons which shall be issued by the clerk upon the precipe of the plaintiff's attorney requesting the same and shall be returnable on a day to be named therein, not less than ten nor more than fifteen days subsequent to the issuance thereof. But if service upon all the defendants has not been made ten days before the return day, the defendants shall have until ten days, after the date of the last service to enter their appearance in

the suit. If the defendants have not been served before the return day, alias summons shall be issued upon demand.

21 And afterwards, to wit, on the same day last aforesaid, the plaintiff by his attorney herein introduced as evidence a certain entry in the Mayaguez journal of this court which said entry is clothed in the words and figures following, to wit:

THE UNITED STATES OF AMERICA, } ss:
District of Porto Rico, }

At a stated term of the district court of the United States of America, within and for the district of Porto Rico, began and had in the court rooms at the city of Mayaguez, P. R., in said district, on the first Monday of June, being the third day of that month, in the year of our Lord one thousand nine hundred and one and of the Independence of the United States of America the one hundred and twenty-six.

Present: The Hon. William H. Holt, judge.

On Monday the third day of June, 1901, among the proceedings had were the following, to wit:

RAFAEL DIAZ AGUERIA } C. L. No. 10. Replevin.
vs.
JOSÉ PEREZ Y FERNANDEZ. }

RAFAEL DIAZ AGUERIA } C. L. No. 11. Assumpsit. Damages, $5,000.00.
vs.
JOSÉ PEREZ Y FERNANDEZ. }

The two above causes having been called, J. M. Keely, attorney for the defendant, moves the court to dismiss same, which is granted and both causes are ordered dismissed at plaintiff's cost.

And afterwards, to wit, on the same day last aforesaid the plaintiff by his attorney herein introduced as evidence a certain entry on the Mayaguez journal of this court for the June term 1901, which said entry is clothed in the words and figures following, to wit:

22 JACINTO PEREZ Y BARROS } Equity. No. 4.
vs.
RAFAEL DIAZ AGUERIA ET AL. }

Restraining order heretofore issued in the above entitled suit will be ordered permanent.

And afterwards, to wit, on the same day last aforesaid the plaintiff by attorney herein introduced as evidence a certain order entered on the Mayaguez journal of this court for the June term, 1901, which said order is clothed in the words and figures following, to wit:

On Tuesday the fourth day of June, 1901, among the proceedings had were the following, to wit:

JACINTO PEREZ BARROS vs. RAFAEL DIAZ AGUERIA and JOSE PEREZ Y FERNANDEZ.	Equity. No. 4. Injunction.

Order.

This is a bill by the complainant Jacinto Perez, as the heir of Claudio Barros to enjoyn the defendant, Rafael Diaz Agueria, who has sued as executor of said Barros, in the further prosecution of two actions at common law pending in this cause, upon or on account of notes executed by one Jose Perez y Fernandez, from paying said Agueria. The denial in the answer is not sufficient to put in issue the right of the complainant to sue; it merely states a legal conclusion. The case is now submitted upon exceptions to the answer for insufficiency. The bill avers that said executor had no power to sue in the United States provisional court for the department of Porto Rico and that therefore the prosecution of said ordinary actions should be enjoyned. It appears that the said Agueria is a foreign executor, at least, it is not claimed otherwise in the answer. He is named as executor in a will in Spain, and if he qualified as such there, yet, no ancillary testamentary letters have been taken out here, and it does not appear that he has been given the right in any way
23 to sue here. A grant of letters in one country does not at common law, authorize the personal representative to exercise any right over the decedent's property beyond the jurisdiction of the country where said letters were granted. There is no extra-territorial power. The representative can neither sue nor be sued out of the jurisdiction of the State from which he derives his authority and to which he is responsible. In order to reach property in another State and to collect debts belonging there to the estate, he must first obtain ancillary letters and comply with the requirements of that jurisdiction. This is the rule in the absence of any statutory provisions in the jurisdiction where the representative sues. (Halleck's Int. Law, page 167.) The exception, therefore, to the answer for insufficiency, is allowed.

Judgment.

It is now ordered that the order of this court, dated May 3rd, 1901, sustaining the exceptions to the answer, be entered on the journal in advance of this judgment and the defendant, Rafael Diaz Agueria, failing to plead further, and the cause now being submitted it is adjudged that the injunction herein be made perpetual and said Diaz Agueria is, as foreign executor, perpetually enjoyned from proceeding further, either in person, or by agent or attorney in the action set out in the pleading, and the complainant, Jacinto Perez y Barros, is adjudged his costs herein, to be taxed by the clerk and for which execution may issue if not paid.

And afterwards, to wit, on the same day last aforesaid there was introduced as evidence by the defendant herein a certain deed of mortgage, which said deed is in the words and figures following, to wit:

24 *Translation of Mortgage Deed.*

Don José Perez y Fernandez to the favor of Don Victor Ochoa y Perez. For Horton & Cornwell.

No. 973.

In the city of Mayaguez, the 10th day of November, 1899, before me Don Mariano Riera Palmer, lawyer, resident of Mayaguez and notary public of same and of the Illustrious College of Porto Rico, and witnesses at the end mentioned: Appear-: Don José Perez Fernandez, of age, married, merchant and resident of this city. I give credit to know him, his professon and residency, and assuring me to be enjoying his civil rights, and believing he has the necessary legal capacity to go into the execution of this deed of voluntary mortgage, he says

1st. That he is the owner of the following properties:

1st. A wall house measuring: 22 "varas" at the front, same being equivalent to 18 metres, 38 centimetres, 98 mil-imetres; and 10 "varas" at her length, same being equivalent to 8 metres, 35 centimetres, 90 millimetres; and a shed of all the length of the house, being 2 varas wide, same being equivalent to one metre, 75 centimetres and 18 millimetres. Said shed is annexed to the said house, and it and a lot, which equally belongs to him are situated in the "barrio" of the Marina Septentrional of this city. Said lot measures 22 "varas" at the front, which metrical equivalence, has been said; and 37 "varas" long, being equivalent to 30 metres, 92 centimetres, and 82 millimetres. Being bound: on the north by property which was of Don Honorato Hernandez; on the
25 south, the river; on the east, the street going to "La Puntilla" and whereby the said house has one of its fronts, and on the west by said river and the sea.

He owns said property because he bought it from Don Claudio Barro y Fernandez, as it is stated in a deed issued in "Santa Eulalia de Callato" (Concejo de Oviedo, Spain) the 25th of August, 1897, before notary of said town Don Cipriano A. Pedrosa, a first copy of which is showed to me for this contract; and which appears recorded at the register of property at folio 250, volume 36 of this city, property No. 869, duplicate, 4th inscription; this property being free from responsibilities or obligations.

2nd. One parcel of land with a superficial extension of 50 cuerdas which are equivalent to 19 hectares, 65 ares, 19 centares which are dedicated to the planting of coffee, bananas, and pasture, and situated in the barrio of "Bucarabones" of the municipality of "Las Marias"; an wooden house, roofed with garvanized iron, low by its front and there being in front of her a decorticating mill for coffee

with an wooden kitchen covered with zinc; a small house with a grinding mill, for coffee, moved by water; a water tank for washing said fruit; three esplanades for drying it, and two small wooden houses, covered with zinc. Said parcel of land is bound: on the north, by lands the property of Don Emilio Gomez and Don Martin Gaud; on the west by the River Grande; on the south, by lands the property of Don Felix Monsegur; and on the east, by the coffee plantation of Don Bernardo Gaud.—And another parcel of land, situated in the "barrio" before named "Jurnia" and now "Palma Escrita," municipality of "Las Marias." Said parcel of land has an extension of about 35 cuerdas, which are equivalent to 13 hectareas, 78 ares, and 69 centares; being bound, on the south by property which was, before, of Mr. Carlos Gaud, and Jose Laplaza's wife, and then from a straight line, to a "tartago," on top of a hill, then in a
western direction with same boundery and land of the plan-
26 tation of Don José Sabater and of Señor Delgado, to a "balla"
in a straight line to a "Tártago," before a high palm limiting with lands the property of heirs of Monsegur to a "laurel" at the shores of the River "Grande;" then following the river's shores to a "Higuerillo" the place by which it was begun.

The two rustic properties, above described were adquired by him by buying them from Doña Jovita Denizar, according to a deed issued before me on the 17th of February 1897: a first copy of which is showed to me for this contract, which does not appear to be recorded in the register of property.

3rd. One rustic property or parcel of land, being planted in coffee, bananas, pasture and brambles and briers; consisting of about 14 "cuerdas:" being equivalent to 5 hectares, 50 ares, 25 centares and 4 mil-iares in the barrio of "Bucarabones" (before named Furnias), site called Palma Escrita, municipal district of "Las Marias," judicial district of this city. Said parcel of property, is bound on the south by lands, before, the property of Don Carlos Gaud, and now of Don Juan Aguas-vivas; on the east, by land the property of José Laplaza; on the north by other lands, the property of Justo Gaud, and on the west by the river called "Guabas." Besides this it is surveyed: Beginning on the east; from "Tartago," from here and on the same direction to the north, to another "Tartago." From there, towards the west, with turns and returnings, till a "roble" tree, at the shores of the River "Guabas," from here upwards the river, to a "coyor" palm, and from here in a straight line to the spot wherefrom it was begun.

He acquired the said property by buying it from Don Gerardo Gonzalez according to a deed issued before Don Juan Z. Rodriguez, who was a notary in this city, on the 5th of February 1897, which first copy is showed to me for this cobtract, and which does not appear recorded in the register of the property.

4th. A wooden house, covered with roof-tile on Minerva street of this city, being marked No. 6, and on lot one which is built and all
its dependencies. Measuring 12 metres, 75 centimetres at the
27 front and 13 metres and 80 centimetres at sides; being bound, entering by the right hand side, by house the property of Don

Jaime Busquet; entering by the left hand side, by another house the property of heirs of Don Valentin Torrens and on its back with that of Maria Garcia, the front being on the north; it is bound on that side by said Minerva street.

The appearer acquired this property by buying it from Don Salvador Mestre, according to document issued before me, on the 30th of December 1892, a first copy of which, is shown to me for this act, and appears recorded in the register of property at folio 136, volium- 25 of this city, property No. 1567, inscription 2nd. Said house does not exist now because it has been destroyed.

5th. A brich house covered with roof-titles, with all its dependencies on Carcel street, now named "Peral" street, where the front of said house is and which it limits on the west, making a corner with Minerva street, both of this city and whereby it has its wooden balcony, being marked No. 10. Measuring by the front 17 metres and 48 centimetres; by its right hand side, that is, by the north and by Minerva street 5 metres 64 centimetres; by the left, that is by the south whereby it is bound by a house the property of Don Miguel Pinillos, 8 metres and 75 centimetres and by its back that is by the east whereby it is limited by a house the property of Silvain Martinez and Carlos Cordero, 17 metres, 82 centimetres. It is built on a lot of same dimensions which also belongs to him.

He owns said property because he bought it from Doña Julia Bernard, according to a deed consented before me on the 12th of January 1893 and first copy of it, is shown to me for this act and appears recorded in the register of property, at folio 103, over, volume the 3rd. of this city, property No. 173, inscription 5th.

Said house does not exist because it has been destroyed.

6th. A wooden house (half high) roof-tile covered qith a balcony at the front, on Sol street of this city, having the front on the
28 south with its kitchen and dependencies. Being bound on its right side that is on the east, by a house the property of heirs of Simon Madera; on the left side, that is on the west, by a house the property of Don Manuel Pinillo; and on the back that is on the north by another house the property of Silvain Martinez, being marked with No. 26. Being 10 varas long at the front, same being equivalent to 8 metres, 35 centimetres, 90 millimetres, and 9 "varas" long at the sides being equivalent to 7 metres, 52 centimetres, 31 millimetres.

It is built on a lot that also belongs to him, same being 13 varas long at the front, which are equivalent to 10 metres, 36 centimetres, 67 millimetres and 18 "varas" long at sides, being equivalent to 15 metres, 4 centimetres, 62 millimetres. Said property belongs to him by buying it from Doña Maria y Doña Antonia Garcia, according to deeds consented before the notary of the capital of this island, Lawyer Don José Agustin de la Torre on the 10th of May 1894 and on the 22nd of May, 1899 before the notary of Habana, Don Francisco de Castro y Vasquez, which first copies are shown to me for this act and are recorded at the register of property. The described house does not exist because it has been destroyed by fire.

Grooping of properties.

Second. That the lots described under numbers 4, 5 and 6 actually form one sole property, and which he hereby groups, so that they may be recorded at the register of property as one sole property, and under one sole number for all of them. And the result of said grouping is as follows:

A lot having one front at Peral street, whereby it is bound on the west; measuring 17 metres, 48 centimetres; on the north, by Minerva street whereby it measures 18 metres, 39 centimetres; it is bound on the east by a house of Lawyer Don Francisco Pellegri and lot of Don Eusebio Biron, whereby it measures 28 metres, 84 centimetres and on the south by Sol street and house the property of heirs of Pinillo whereby it measures 10 metres, 86 centimetres, 67
29 millimetres on which lot exists a brick house two story high: the second floor of which is devoted to residence, and the first to stores; and same being covered with zinc having a balcony on the side of Peral street and a small brick balcony at the side of Minerva street with no number and same measures 17 metres and 48 centimetres, at the front and 18 metres, 35 centimetres long at sides.

Confession of debt.

Third. Appearer, Sr. Perez y Fernandez and acknowledges to owe to Don Victor Ochoa y Perez, of age, widower, merchant, resident in Asturias, and of the vicinity of the capital of this island, the sum of ($20,000.00) twenty thousand pesos, Porto Rican currency, which said gentleman has given him for different purposes.

Payment.

Fourth. That he obliges himself to pay to his creditor Sr. Ochoa the said twenty thousand dollars ($20000.00) which he debits him within the time of five years, counted from this date without premium or interest.

Mortgage.

Fifth. To guarantee the aforesaid obligation the debtor Sr. Perez Fernandez specially mortgages in favor of creditor Don Victor Ochoa y Perez, the properties described under Nos. 1, 2, and 3 and the grouping of the ones under No. 4, 5 and 6 with house, and the rest which constitutes it. Said properties stay with said obligation until all debt should be paid.

Sixth. According to what it is provided by the mortgage law (Ley Hipotecaria) the grantor distributes the capital of said obligation in the following way:

The house described in the first place will be responsible for three thousand dollars ($3000.00) of capital.

The property of fifty (50) cuerdas described in the second place will be responsible for one thousand and five hundred dol-
30 lars ($1500.) of capital.

The one of 35 cuerdas will be responsible for one thousand

and five hundred dollars ($1500.00) of capital. The one described under No. 3 (three) of about fourteen (14) cuerdas will answer for two thousand dollars of the capital.

And the property formed by grouping made in the second clause will answer for twelve thousand ($12000) dollars of the amount of debt.

Valuation.

Seventh. According to what is provided by paragraph 137 of the moertgage law, the appearer assesses the mortgaged property, renouncing to all new valuations or action with this purpose in the following way:

The first in the sum of three thousand dollars ($3000.00) of currency.

The second, of fifty cuerdas in the sum of five thousand dollars ($5000.00).

The third of thirty five cuerdas in the sum of three thousand dollars ($3000.00).

The one described under numbre three of fourteen cuerdas in the sum of three thousand dollars ($3000.00).

The one resulting from the grouping before made in the sum of fourteen thousand dollars ($14000.00).

Notifications.

I the notary notified them of: That confessed, as it is, the debt, there is no place for any exception of it not being true, therefore the properties mortgaged by this deed, are obliged to the responsibility of the same, though it should be proved afterwards that it was not received in all or in part.

That the preferred legal mortgage, which the province and municipalities of this city and Las Marias, have any other creditor for the collection of last annualty of taxes not satisfied by
31 the mortgaged properties, is in favor of the said province and municipalities.

That this deed must be recorded at the register of property of this city and that without said requisite it will not prejudice a third person nor will it be admissible by any court, council or office of the government, so it is consented to and signed, with the witnesses by Don Jose Carmona and Don Luis M. Cardona residents in this city; previous reading that in only one act I did to all and advised them of the right granted to them by law, to read it by themselves, of what I give credit.

JOSE PEREZ FERNANDEZ.

Signed MARIANO RIERA PALMER, *Lawyer.*

JOSE CARDONA.

LUIS M. CARDONA.

It corresponds faithfully with the original deed which under number firstly said (973) is filed in the protocol of this notary, in

my charge. Crediting it and being asked for by Señor Don José Fernandez I issue this first copy in eight sheets of paper.

Mayaguez, November 20th, 1901.

(Signed) MARIANO RIERA PALMER, *Lawyer.*

The foregoing is a true and faithful translation of its original.

(Signed) Z. VALS SPINOSA,
Interpreter, United States District Court, Porto Rico.

Endorsement: C. L. 70. U. S. district court for Porto Rico. Jose Perez y Fernandez *vs.* Jose Antonio Fernandez y Perez Translation Exhibit "A" by defendant. Trial Dec. 11, 1901. Dec. 12, 1901. Mayaguez. Filed clerk's office. United States district court Dec. 12, 1901 (Signed) Ricardo Nadal clerk of the court.

32 And afterwards, to wit, on the 12th day of December A. D. 1901 an entry was made upon *de* journal of said court in the said case, which said entry is clothed in the words and figures following, to wit:

PEREZ Y FERNANDEZ
vs.
FERNANDEZ Y PEREZ. } C. L. 70.

Resumed.

Now comes the attorneys for the defendants herein and present a motion to non suit which is overruled. Whereupon the attorneys for the defendants enter an exception to the ruling of the court. Thereupon the jury hears the evidence and arguments of counsel.

And afterwards, to wit, on the same day last aforesaid an entry was made on the journal of said court in the said cause, which said entry is clothed in the words and figures following, to wit:

PEREZ Y FERNANDEZ
vs.
FERNANDEZ Y PEREZ. } C. L. 70.

Resumed.

The jury having heard the instructions of the court upon the law in the case retires.

And afterwards, to wit, on the same day last aforesaid an entry was made upon the journal of the said court in the said cause, which said entry is clothed in the words and figures following, to wit:

PEREZ Y FERNANDEZ
vs.
FERNANDEZ Y PEREZ. } C. L. 70.

Now comes the jury in the above entitled cause and returns the following verdict:

"We, the jury, find for the plaintiff seven thousand dollars ($7000.00) in damages.

J. J. JIMENEZ, *Foreman.*

Mayaguez, December 12th, 1901."

33 And afterwards, to wit, on the same day last aforesaid came the defendant in this cause by his attorneys and filed in the clerk's office of the court aforesaid his certain motion in this case, which said motion is clothed in the words and figures following, to wit:

District Court of the United States in and for the District of Porto Rico.

JOSE PEREZ Y FERNANDEZ, Plaintiff,
versus
JOSE ANTONIO FERNANDEZ Y PEREZ, RAFAEL DIAZ AGUERRIA, Defendants.

Motion for a New Trial.

Now comes the defendant Jose Antonio Fernandez y Perez, by his attorneys Horton and Cornwell and moves the court to vacate the verdict found by the jury in this action on the 12th day of December A. D., 1901, and to grant to said defendant, Jose Antonio Fernandez a new trial for the following causes, to wit,

Because the amount of damages assessed by the jury in their verdict was excessive and too large and not warranted by the evidence

Because the verdict of the jury is contrary to law.

Because the court erred in instructing the jury as to the law in the case.

Because the verdict of the jury has no evidence to support it and is so far contrary to the evidence — to shock the moral sense.

(Signed) HORTON AND CORNWELL,
Attorneys for the Defendant Jose Antonio Fernandez.

(Indorsement of motion:) Common law, 70, Jose Perez y Fernandez *versus* Jose Antonio Fernandez and Rafael Diaz Aguerria. Motion for a new trial of defendant, Jose Antonio Fernandez Filed, clerk's office, United States district court. Dec. 12, 1901, Ricardo Nadal, clerk of the court.

And afterwards, to wit, on the same day last aforesaid, an entry was made on the journal of the said court in said cause, which said entry is clothed in the words and figures following, to wit:

PEREZ Y FERNANDEZ
vs. } C. L. 70.
FERNANDEZ Y PEREZ.

Now come the attorneys for the defendant in this cause and present a motion for a new trial, which motion, upon hearing the counsel of both parties, is overruled.

Whereupon the attorneys for the defendant except from the ruling of the court and are given till the 14th of January, 1902, to file a bill of exceptions.

And afterwards, to wit, on the same day last aforesaid, an entry was made upon the journal of said court in said cause, which said entry is clothed in the words and figures following, to wit:

PEREZ Y FERNANDEZ
vs. } C. L. 70.
FERNANDEZ Y PEREZ.

Judgment.

On this 12th day of December, 1901, this cause being called for trial and both parties appearing and after hearing the evi-
34 dence and the arguments of counsel, it is submitted to the jury under the instructions of the court.

Thereupon the jury retired and after due deliberation returned the following verdict,

"We, the jury, find for the plaintiff seven thousand dollars ($7,000.00) in damages.

J. J. JIMENEZ, *Foreman.*"

Whereupon and on this same day the defendant files his motion for a new trial for grounds therein set forth, and after hearing the argument of counsel the said motion is by the court overruled.

Wherefore it is ordered and adjudged that plaintiff Jose Perez y Fernandez have and recover of Jose Fernandez y Perez the said sum of seven thousand dollars damages and his costs herein expended for which he shall have execution.

And upon request of defendant he is allowed until January 15, 1902, to present and file his bill of exceptions herein.

And afterwards, to wit, on the 13th day of January, A. D. 1902, came plaintiff and defendant in this case by their respective attorneys and filed in the clerk's office of the court aforesaid their certain agreement in this case, which said agreement is clothed in the words and figures following, to wit:

In the District Court of the United States for Porto Rico, Sitting at Mayaguez.

JOSE PEREZ Y FERNANDEZ
vs.
JOSE FERNANDEZ Y PEREZ.

Agreement Extending Time to File Bill of Exceptions.

It is hereby agreed between the parties hereto that defendant Jose Fernandez y Perez may file and present his bill of exceptions to the court not later than February 1st, 1902.

(Signed) HORTON AND CORNWELL,
Attorneys for Jose Fernandez y Perez.

(Signed) F. H. DEXTER,
Attorney for Plaintiff.

(Indorsement:) C. L. Mayaguez. Jose Perez y Fernandez *vs.* Jose Fernandez y Perez. Agreement extending time to file bill of exceptions. Filed clerk's office United States district court. (Signed) Ricardo Nadal by A. Aguayo, clerk of court. January 13, 1902.

And afterwards, to wit on the same day last aforesaid there was an order entered upon the chancery order book of said court in said cause which said order is clothed in the words and figures following, to wit:

35 In the District Court of the United States for Porto Rico, January 13, 1902.

Present: The Honorable Wm. H. Holt, judge.

JOSE PEREZ Y FERNANDEZ
vs.
JOSE FERNANDEZ Y PEREZ.

Order.

A stipulation having been filed herein and the parties agreeing thereto, it is hereby ordered that defendant's time for filing bill of exceptions be extended until February 1st, 1902, and it is hereby further ordered that but not by consent that the amount of the defendant's supersedeas bond be fixed at ten thousand dollars.

January 13th, 1902.

(Signed) WM. H. HOLT, *Judge.*

And afterwards, to wit on the 29th day of January, 1902, came plaintiff and defendant herein by their attorneys and filed in the clerk's office of the court aforesaid their certain stipulation which said stipulation is clothed in the words and figures following, to wit:

In the District Court of the United States for Porto Rico.

JOSE PEREZ Y FERNANDEZ
vs.
JOSE ANTONIO FERNANDEZ Y PEREZ.

Stipulation.

It is hereby agreed — counsel in the above entitled cause that defendant shall have until February 5, 1900, to file his bill of exceptions.

(Signed) F. H. DEXTER,
Attorney for Plaintiff.

(Signed) HORTON AND CORNWELL,
Attorneys for Defendant.

(Indorsement:) Jose Perez y Fernandez *vs.* Jose Antonio Fernandez y Perez. Stipulation extending time for defendant to file bill of exceptions to February 5, 1902. Filed clerk's office United States district court Jan. 29. 1902. Ricardo Nadal, clerk of the court. By H. H. Scoville, D. C.

And afterwards, to wit, on the same day last aforesaid there was entered an order in the chancery order book of said court, which order is clothed in the words and figures following, to wit:

In the District Court of the United States for Porto Rico, January 29, 1902.

Present: The Honorable Wm. H. Holt, judge.

PEREZ Y FERNANDEZ
vs.
FERNANDEZ Y PEREZ. } C. L. 70.

36 Now came the parties and filed stipulation extending time to file bill of exceptions until Febryary 5th, 1902, and it is so ordered.

(Signed) WM. H. HOLT, *Judge.*

And afterwards, to wit, on the first day of February, A. D. 1902, came the plaintiff, and filed in the clerk's office of the court aforesaid, his certain assignment of judgment in this case, which said assignment of judgment is clothed in the words and figures following, to wit:

In the District Court of the United States for Porto Rico, Sitting at Mayaguez.

JOSÉ ANTONIO PEREZ Y FERNANDEZ
vs.
JOSÉ ANTONIO FERNANDEZ Y PEREZ.

Assignment of Judgment.

In consideration of the sum of two thousand dollars heretofore received by me from Don José B. Gonzalez, of San Juan, Porto Rico, and of the further sum of five thousand dollars to me paid and delivered at the time of this agreement, I hereby, sell, assign and transfer to the said José B. Gonzalez, for his use and benefit the judgment obtained by me in the above entitled cause in the district court of the United States for Porto Rico at a session thereof held on the twelfth day of December, 1901, in the city of Mayaguez.

And I hereby authorize the said José B. Gonzalez to collect and enforce the payment of the said judgment in my name by execution or otherwise and to take such steps in the said district court of the United States, or any other court, as may be necessary to collect the same. It is understood, however, that the said judgment is hereby assigned subject to the prior lien and claim of F. H. Dexter, attorney at law, for his services, in connection with the recovery thereof, of which the said José B. Gonzalez has notice.

Signed in duplicate this February 1st, 1902.

(Signed) JOSÉ PEREZ.

Be it known that on this first day of February, 1902, before me personally appeared José Perez y Fernandez, to me personally known, who acknowledged the execution of the foregoing instrument as his free act and deed.

(Signed) RICARDO NADAL,
[SEAL.] *Clerk U. S. District Court of Porto Rico.*

Indorsement: C. L. 70, Mayaguez. Fernandez vs. Perez. Assignment of judgment. Filed, Clerk's office, United States district court, February 1st, 1902. (Signed) Ricardo Nadal, clerk of court.

And afterwards, to wit, on the 5th day of February, 1902, an order was entered upon the chancery order *order* book of the said court in said cause, which said order is clothed in the words and figures following, to wit:

In the District Court of the United States for Porto Rico, February 5th, 1902.

Present: The Hon. Wm. H. Holt, judge.

PEREZ Y FERNANDEZ
vs.
FERNANDEZ Y PEREZ and RAFAEL DIAZ AGUERRIA.

Order.

The bill of exceptions heretofore tendered herein is now signed, sealed, approved filed and enrolled, but not to be copied upon the record, to have the same effect as if it had been approved and filed in open court at the December term, 1901, of the court at Mayaguez.

37 And afterwards, to wit, on the same day last aforesaid, there was filed in the clerk's office of this court in this case, by defendant through his attorneys herein, a certain bill of exceptions, which said bill of exceptions is in words and figures following, to wit:

In the District Court of the United States for Porto Rico.

JOSÉ PEREZ Y FERNANDEZ
vs.
JOSÉ ANTONIO FERNANDEZ Y PEREZ.
} Bill of Exceptions.

Be it remembered that at a term of the district court of the United States for Porto Rico, held in the city of Mayaguez on the 11th day of December A. D. 1901, a cause therein pending wherein Jose Perez y Fernandez was plaintiff and Jose Antonio Fernandez y Perez, and Rafael Diaz Aguerria, were defendants, came on to be heard before the Hon. Wm. H. Holt, judge of the said court, at which time came the said parties, by their respective attorneys, and thereupon the said issues in manner aforesaid joined between the said parties came on to be tried, and the jurors of the jury aforesaid whereof mention is within made, being called likewise came and were sworn to try said issues upon the merits of said cause in manner aforesaid joined.

And thereupon the plaintiff, José Perez y Fernandez to maintain the issues on his part, offered and introduced in evidence a certain document entitled as the declaration in a certain cause between said Rafael Diaz Aguerria, executor of the last will and testament of Claudio Barros, as plaintiff, against the said José Perez y Fernandez, as defendant, filed on the 2nd day of January, 1900, in a cause then pending in the United States provisional court for the department of Porto Rico in the cause aforesaid, which document was in words and figures following to wit:

Copy of Exhibit 1 for the Plaintiff.

In the United States Provisional Court for the Department of Puerto Rico.

Declaration.

Rafael Diaz Aguerria, Executor Last Will and Testament — Claudio Barro, vs. José Perez y Fernandez.	Assumpsit. Damages, $5,000.00.

Rafael Diaz Aguerria, citizen of Spain, plaintiff, executor of last will and testament of Claudio Barro, citizen of Spain, deceased, complains of José Perez y Fernandez, defendant of a plea of trespass on the case on promises.

For that, whereas, in the life time of the said Claudio Barro, on the 27th day of August, in the year 1897, in the city of Colloto, province of Oviedo, Spain, the defendant made his promissory note and delivered the same to the said Claudio Barro, thereby then and there promised to pay on the 31st day of December, A. D. 1897, the sum of $1000.00; thereby then and there promissed to pay on the 31st day of December A. D. 1898, the sum of $1420.00 pesos; thereby then and there promissed to pay on the 31st day of December A. D.
1899 the sum of $1360.00 pesos, in the city of Mayaguez,
38 Puerto Rico, for value received, by means whereof the defendant then and there at the time and place first aforesaid became liable to pay to the said Claudio Barro the said sums of money in the said promissory note specified according to the tenor and effect of the said note. For money before that time lent by Claudio Barro to the defendant at his request; for money before that time paid out and expended by Claudio Barro for the use of the defendant at his request; for goods, chattels and effects before that time sold and delivered by Claudio Barro to the defendant at his request. Yet, although the aforesaid day of payments in the said note has elapsed the defendant has not paid any of the aforesaid amounts of said note or any part of them either to the said Claudio Barro in his life time or to the plaintiff since the death of the said Claudio Barro, nor has the defendant, though thereto requested paid the several other sums of money above specified or any or either of them or any part thereof either to the said Claudio Barro in his life time or to the plaintiff since the death of the said Claudio Barro, but to pay the same the defendant refuses to the damage of the plaintiff as executor aforesaid of $5000.00 and therefore he brings his suit.

(Signed) HORTON & CORNWELL,
Attorneys for Plaintiff.

Filed, clerk's office United States provisional court January 2nd 1900.

ROBERT ALEXANDER,
Captain 14th Infantry, Clerk of the Court,
By RICARDO NADAL,
Deputy Clerk.

And thereupon said plaintiff further to maintain the issues on his part offered and introduced in evidence another document entitled as an affidavit in attachment filed on the same day and in the same cause and court last aforesaid, which document was in words and figures following, to wit:

COPY OF EXHIBIT 2 FOR PLAINTIFF.

In the United States Provisional Court for the Department of Porto Rico.

Affidavit of Attachment.

José Antonio Fernandez makes oath and says he is power of attorney of Rafael Diaz Agueria, and that Rafael Diaz Agueria is the executor of the last will and testament of Claudio Barro, and that Rafael Diaz Agueria has a good cause of action therein, and that affiant has reason to believe that the defendant intends to and will fraudulently part with or conceal his property before judgment can be recovered against him, so that said judgment cannot be satisfied out of said property.

(Signed) JOSÉ ANTONIO FERNANDEZ.

Subscribed and sworn to before me this second day of January A. D. 1900 at Mayaguez, P. R.

ROBERT ALEXANDER,
Captain 14th Infantry, Clerk U. S. Prov. Court,
(Signed) By RICARDO NADAL,
Deputy Clerk.

39 Filed in the clerk's office United States provisional court January 2nd, 1900.

ROBERT ALEXANDER,
Captain 14th Infantry, Clerk of the Court,
(Signed) By RICARDO NADAL,
Deputy Clerk.

And thereupon said plaintiff further to maintain the issues on his part, offered and introduced in evidence another document entitled as an additional affidavit in attachment filed in the same cause and court last aforesaid on the 8th day of January, A. D. 1900, which document was in words and figures as follows, to wit:

COPY OF EXHIBIT 3 FOR THE PLAINTIFF.

In the United States Provisional Court for the Department of Puerto Rico.

RAFAEL DIAZ AGUERIA
vs.
JOSE PEREZ Y FERNANDEZ. } Affidavit for Attachment.

José Antonio Fernandez makes oath and says — power of attorney — Rafael Diaz Agueria, and that Rafael Diaz Agueria, citizen of Spain, residing in Spain, is executor of last will and testament of Claudio Barro, deceased, who was a citizen of Spain and that José Perez y Fernandez is indebted to the estate of the late Claudio Barro in the sum of $15,000.00 pesos, after allowing all just credits and set-offs, for promissory notes made and signed and delivered by José Perez y Fernandez to the late Claudio Barro for full value received and that the said José Perez y Fernandez is about to fraudulently conceal, dispose of or mortgage his property so as to hinder or delay his creditors.

(Signed) JOSÉ ANTONIO FERNANDEZ.

Subscribed and sworn to before me this eighth day of January A. D. 1900, at Mayaguez, P. R.

ROBERT ALEXANDER,
Captain 14th Infantry, Clerk U. S. Provisional Court,
(Signed) By RICARDO NADAL,
Deputy Clerk.

And thereupon said plaintiff further to maintain the issues on his part offered and introduced in evidence another document entitled as a writ of attachment, filed in the same cause and court last aforesaid, with the return of the marshal of the said court thereon on the 4th day of January, 1900, which document was in words and figures following, to wit:

40 COPY OF EXHIBIT 4 FOR PLAINTIFF.

The President of the United States of America to marshal of the United States provisional court for the department of Puerto Rico, Greeting:

Whereas, José Antonio Fernandez, power of attorney for Rafael Diaz Agueria, has this day filed the necessary affidavit in an action on assumpsit, wherein he demands the sum of $5000.00 (five thousand dollars) to procure a writ of attachment, against the lands and tenements, goods, chattels and effects of José Perez y Fernandez, which may be found in this department.

Therefore, you are hereby commanded to levy upon and take possession of the lands and tenements, goods, chattels and effects of

José Perez y Fernandez, not exempt from taxation, which may be found within the department of Puerto Rico, or so much thereof as will satisfy the said claim of $5000.00 (five thousand dollars) and the costs of this action, and make return of your doing hereon on or before the 13th day of January, A. D. 1900, and therein fail not.

Witness: George W. Davis, brigadier general U. S. V. commanding the department aforesaid, and the seal of this court at Mayaguez, P. R. this second day of January, A. D. 1900.

[SEAL.] ROBERT ALEXANDER,
Capt. 14th Inf., Clerk U. S. Provisional Court,
(Signed) By RICARDO NADAL,
Deputy Clerk.

(*Marshal's Return.*)

Received this writ on the 2nd day of January, 1900, and served the same on the 4th day of January, 1900, by attaching the two story brick and store house of No. 10 Peral street, Mayaguez, and posting the notice thereof in conspicuous place, said property belonging to José Perez y Fernandez. This at Mayaguez, P. R.

S. C. BOTHWELL,
U. S. Marshal,
(Signed) By WILHELM LUTZ,
Deputy Marshal.

Fees.

Service	$2.00
Posting notice	1.00

Filed clerk's office, U. S. provisional court 4th of January 1900.

ROBERT ALEXANDER,
Capt. 14th Infantry, Clerk of the Court.
(Signed) By RICARDO NADAL,
Deputy Clerk.

And thereupon said plaintiff, further to maintain the issues on his part, offered and introduced in evidence another document entitled "Notice of attachment," filed in the same cause and court last aforesaid on said 4th day of January, 1900, which document was in words and figures following, to wit:

41 COPY OF EXHIBIT 5 FOR PLAINTIFF.

Notice.

To whom it may concern:

You are hereby notified that under and by virtue of a writ of attachment issued out of the U. S. provisional court for the department of Puerto Rico, dated the 4th day of January, A. D. 1900, in a suit pending in the said court in which Rafael Diaz Aguerria is plaintiff, and José Perez y Fernandez defendant, and to me directed

and delivered, I have this day attached and levied upon certain real-estate described as follows:

One brick house situated on Peral street, number 10, in the city of Mayaguez, with its lots, bounded on the right by Minerva street, on the left by the house of Manuel Pinillo, in rear by the property of Silvani Martinez, and Carlos Cordero, as the property of said defendant.

This notice is in compliance with the rule of said court requiring notice of such levy to be posted upon the property attached.

Dated this 4th day of January, A. D. 1900.

S. C. BOTHWELL,
Marshal U. S. Prov. Court for the Dept. of P. R.,
(Signed) By WILHELM LUTZ,
Deputy Marshal.

I, Samuel C. Bothwell, marshal as aforesaid, do hereby certify that the foregoing is a true copy of the notice of attachment signed by me according to rule 14 of the said court, and that said notice was duly posted by me in a conspicuous place upon the attached property on the 4th day of January A. D. 1900.

Witness my hand at Mayaguez, Puerto Rico, this fourth day of January, A. D. 1900.

S. C. BOTHWELL,
Marshal U. S. Prov. Court for Dept. of P. R.,
(Signed) By WILHELM LUTZ,
Deputy Marshal.

And thereupon said plaintiff further to maintain the issues on his part offered and introduced in evidence another document, entitled "Summons," filed in the said cause and court last aforesaid, with the return of the marshal of the said court thereon on the 13th day of January, 1900, which document was in words and figures following to wit:

COPY OF EXHIBIT 6 FOR PLAINTIFF.

RAFAEL DIAZ AGUERRIA, Executor Last Will and Testament of Claudio Barro, Deceased,
vs.
JOSE PEREZ Y FERNANDEZ.

42 The President of the United States of America to marshal of said court, Greeting:

You are hereby commanded to summon José Perez y Fernandez, residing in Mayaguez, to be and appear before the United States provisional court for the department of Puerto Rico, at Mayaguez, P. R. on or before the 13th day of January, A. D. 1900, then and there to answer in an action of assumpsit, damages $5000.00.

Failing to so appear judgment may be entered against the said José Perez y Fernandez, by default:

Witness: George W. Davis, brigadier general U. S. V., commanding the department aforesaid, and the seal of this court at Mayaguez, P. R. this second day of January, A. D. 1900.

ROBERT ALEXANDER,
Captain 14th Infantry, Clerk U. S. Provisional Court,
(Signed) By RICARDO NADAL,
[SEAL.] *Deputy Clerk.*

(*Marshal's Return.*)

Received this writ on the 10th day of January, 1900, and served the same on the 10th day of January, 1900, by delivering a true copy thereof to José Perez y Fernandez, the within named person. This at San Juan, P. R.

(Signed) SAMUEL C. BOTHWELL,
U. S. Marshal, San Juan, P. R.,
(Signed) By JAMES LAWRENCE,
Deputy Marshal.

Service fees $2.00

Filed: Clerk's office, United States provisional court, 13th of January, 1900.

ROBERT ALEXANDER,
Capt. 14th Inf., Clerk of the Court,
(Signed) By RICARDO NADAL,
Deputy Clerk.

And thereupon said plaintiff, further to maintain the issues on his part, offered and introduced as evidence rule No. 17 of the said United States provisional court for the department of Puerto Rico aforesaid, and which said rule was in words and figures as follows, to wit:

COPY OF EXHIBIT 7 FOR PLAINTIFF.

Proceedings at Law.

Rule No. 17 (of the U. S. provisional court for the dept. of Puerto Rico).

All suits of civil nature, other than those in equity and admiralty, shall be begun by summons which shall be issued by the clerk upon the præcipe of the plaintiff's attorney requesting the same and shall be returnable on a day to be named therein not less than ten nor more than fifteen days subsequent to the issuance thereof. But if service upon all the defendants has not been made ten days
43 before the return day, the defendants shall have until ten days after the date of the last service to enter their appearance in the suit. If the defendants have not been served before the return day, alias summons shall be issued upon demand.

And thereupon said plaintiff further to maintain the issues on his part offered and introduced in evidence that part of the record or proceeding in the said United States district court for Porto Rico at the June term thereof, A. D. 1901, held in said city of Mayaguez, entered on page 138 of said record, and referring to the cause aforesaid, which said entry was in words and figures following to wit:

COPY OF EXHIBIT 8 FOR PLAINTIFF.

RAFAEL DIAZ AGUERRIA
vs.
JOSE PEREZ Y FERNANDEZ. } Com. L. No. 11. Assumpsit, $5,000.00.

The two above causes having been called, J. M. Keedy, attorney for the defendant moves the court to dismiss the same, which is granted and both causes are ordered dismissed at plaintiffs' costs.

And further to maintain said issues, said plaintiff offered and introduced in evidence another portion of said record of proceedings in the court last aforesaid at the term last aforesaid in a certain cause in chancery then pending in said court wherein Jacinto Perez y Barros was complainant and said Rafael Diaz Agueria and others were defendants, which entry is contained on page 144 of said record and was in words and figures following, to wit:

JACINTO PEREZ Y BARROS
vs.
RAFAEL DIAZ AGUERRIA ET AL. } Eq. 4.

Restraining order heretofore issued in the above entitled cause will be ordered permanent.

And further to maintain said issues, said plaintiff offered and introduced in evidence another portion of said record of proceedings in the court last aforesaid, at the term last aforesaid, and in the cause last aforesaid, which said entry is contained on page 146 of the record aforesaid, and is in words and figures following, to wit:

COPY OF EXHIBIT 10 FOR PLAINTIFF.

JACINTO PEREZ Y BARROS
vs.
RAFAEL DIAZ AGUERRIA and JOSÉ PEREZ y Fernandez. } Equity. 4. Injunction.

Order.

This is a bill by the complainant, Jacinto Perez, as the heir of Claudio Barros, to enjoin the defendant, Rafael Diaz Aguerria, who has sued as executor of said Barros, in the further prosecution of two

actions at common law pending in this court, upon or on account of notes executed by one, José Perez y Fernandez, from paying to
44 said Aguerria. The denial in answer is not sufficient to put in issue the right of the complainant to sue. It merely states a legal conclusion. The case is now submitted upon exceptions to the answer for insufficiency. The bill avers that said executor had no power to sue in the United States provisional court for the department of Puerto Rico and that therefore the prosecution of said ordinary actions should be enjoined. It appears that the said Aguerria is a foreign executor, at least, it is not claimed otherwise in the answer. He is named as executor in a will in Spain, and if he qualified as such there, yet, no ancillary testamentary letters have been taken out here, and it does not appear that he has been given the right in any way to sue here. A grant of letters in one country does not, at common law, authorize the personal representative to excercise any right over the decedent's property beyond the jurisdiction of the country where said letters were granted. There is no extra-territorial power. The representative can neither sue nor be sued out of the jurisdiction of the State from which he derives his authority and to which he is responsible. In order to reach property in another State, and to collect debts belonging there to the estate, he must first obtain ancillary letters and comply with the requirements of that jurisdiction. This is the rule in the absence of any statutory provision in the jurisdiction where the representative sues. (Halleck's Int. Law, page 167.) The exception, therefore, to the answer for insufficiency, is allowed.

Judgement.

It is now ordered that the order of this court, dated May 3rd, 1901, sustaining the exceptions to the answer, be entered on the journal in advance of this judgment, and the defendant, Rafael Diaz Aguerria, failing to plead further, and the cause now being *now* submitted, it is adjudged that the injunction herein be made perpetual and said Diaz Aguerria is, as foreign executor perpetually enjoined from proceeding further either in person, or by agent or attorney in the action set *put* in the pleadings, and the complainant, Jacinto Perez y Barros, is adjudged his costs herein, to be taxed by the clerk and for which execution may issue if not paid.

And thereupon further to maintain said issues, said plaintiff being produced as a witness and having first been duly sworn*ed*, testified as follows:

By Mr. DEXTER:

Q. Please state your name?
Ans. José Perez y Fernandez.
Q. Where do you reside?
Ans. In Mayaguez.
Q. How long have you lived in Mayaguez?
Ans. Seventeen years.

Q. How long have you lived in Porto Rico?
Ans. 23 years.
Q. What is your occupation at the present time?
Ans. I am a merchant.
Q. What was your business on January 2nd. 1900?
Ans. I was merchant and active partner of the house of Perez, Ramos y Cia.
Q. Did you owe any money at that time to one Claudio Barro?
—. Yes.
Q. Had you refused to pay to him or to his lawful representative?
Ans. No, sir; never; never.
Q. What amount of money was that that you owed on the 2nd day of January 1900 to Claudio Barro?
Ans. I think I owed about $6000. six thousand pesos provincial currency.
Q. Was Claudio Barros alive or dead on the 2nd day of January 1900?
Ans. He had died on December 23rd 1898.
Q. Where did he die?
Ans. In the province of Oviedo, in Spain.
Q. State what demand, if any, had been made upon you
45 prior to Jan. *January* 2nd, 1900, by the representatives of the estate of Claudio Barros?
Ans. Mr. Fernandez, who says he is the attorney in fact of Rafael Diaz Aguerria, which power of attorney he has never shown me was claiming from me several sums.
Q. Who was Rafael Diaz Aguerria?
Ans. A gentleman from Oviedo.
Q. What relation did he occupy to Claudio Barros?
—. None at all.
Q. Do you know whether or not Claudio Barros left a will?
Ans. Yes.
Q. State whether or not Rafael Diaz Aguerria claimed to be an heir of Claudio Barros?

Mr. CORNWELL: I object to the question, because it is leading.

Q. Did Rafael Diaz Aguerria make any claims with reference to the estate of Claudio Barros?
Ans. In December 1899 I showed him my account personally.
Q. Do you know who were the heirs of Claudio Barros at that time?
Ans. The widow, Mrs. Dolorez Mendez, and a boy in Mayaguez.
Q. What was the name of the boy in Mayaguez?
Ans. Maximino Barros. He sold his inheritance to Jacinto Barros, a nephew of the deceased.
Q. Who was the third heir?
—. Rafael Diaz Aguerria.
Q. What relation, if any, did you occupy towards Claudio Barro in his life time?

Mr. CORNWELL: I object to the question, because it is immaterial.

The COURT: That is not competent.

Q. Please state who was Claudio Barros?

Mr. CORNWELL: I object as the question is immaterial.
The COURT: I will let him ask it: go ahead.

Q. Who was Claudio Barros?
Ans. An intimate friend of mine and my attorney in fact for a number of years.
Q. Would you please explain what this indebtedness to which you have referred previously, what it consisted of, what was its nature, on January 2nd, 1900.

Objection by counsel for defendant as to materiality.
The COURT: The question is immaterial as to what the indebtedness was for.

Q. This indebtedness that you have referred to in your testimony, was it for value received, or for some commission or trust you had accepted for Barros?

The COURT: I do not think it makes any difference as to the indebtedness what it was for.

Q. Please state what happened on the 2nd of January or about that time?
Ans. On the 18th of December I went to the country for the purpose of collecting some money.
Q. December of what year?
Ans. Of 1899. I received a letter from Mr. Horton. When I came down from the highlands I went to see Mr. Horton at his office.
Q. Please speak of what happened with reference to the attachment on your property?

Mr. CORNWELL: I object to that question, because it is leading.
The COURT: I will let him ask that; go ahead.

Q. was repeated.
Ans. The attachment on my property took place when I was in the capital. On the 31st of December Mr. Horton had been there at my place the same day—and they asked me for a promissory note which I had paid, and they threatened me with searching my house, and being frightened out of my wits, as there was no Spanish consul here——

The COURT: I do not think that is competent.

Q. Please state the character and describe this house that you owned at No. 10 Calle Peral on January 4th, 1900?
Ans. It was a two story house made of stone or masonry,
46 and in the lower part is the store of our house—of Perez, Ramos y Compañia, and the upper story is for a dwelling.
Q. What was the value of that property at that time? more or less?

Ans. I calculated it at that time at fifteen thousand pesos, provincial currency.

Q. I hand you this "escritura" entitled "Escritura de Sociedad Mercantil," and ask you whether or not this is the "escritura" of your association, or firm?

Ans. Yes this is the one.

The COURT: That is a deed to the property.

Mr. DEXTER: No, your honor; this is the writing containing the articles of association of the firm to which this plaintiff belonged.

Mr. CORNWELL: I certainly object to it, may it please the court, because it is entirely immaterial.

The COURT: Are those the articles of association of the plaintiff's house?

Mr. DEXTER: Yes, sir; showing the interest he had in the firm and the nature of the business.

The COURT: Was his interests attached?

Mr. DEXTER: No, sir; but he alleges that his business was affected by that attachment.

Mr. CORNWELL: His business was not molested in any way.

The COURT: I think you can show he was a partner, but I do not think you can show these articles of partnership.

Q. Who composed that firm?

Mr. CORNWELL: I object to the question, because it is immaterial.

The COURT: Ask the question: Who were the partners of that firm on January 4th, 1900?

Q. was asked.

Ans. Lucas Ramos y Rios and myself, and Don Felix Suarez Infanzon as a silent partner.

Q. What was the capital of that firm?

Ans. $30000 pesos.

Q. What part of that capital pertained to you?

Ans. $10000 pesos.

Q. What was the nature, or character, of the business done by your firm?

Mr. CORNWELL: I object to that as it is immaterial.

Mr. DEXTER: There is a positive allegation in the declaration that the interests of this plaintiff in this partnership was affected by this attachment.

The COURT: Well, ask him.

Q. What was the character of the business done by your firm?

Ans. It was an importing house—wholesale and retail.

Q. Can you state approximately the profits you enjoyed the previous year as to your part?

Mr. CORNWELL: I object to the question because it is leading, immaterial and is not a proper question.

The COURT: With what view is that testimony sought to be given?

Mr. DEXTER: To meet the allegation, your honor. Not only that

he suffered in his private affairs, but in the business of the house of which he was a member.

The COURT: Do you mean to prove prospective profits?

Mr. DEXTER: No, sir; the profits, the real profits enjoyed by him the previous year and the year afterward.

Mr. CORNWELL: That will be more impossible to prove.

The COURT: I think that is too uncertain—to prove what might have been the profits expected. You can prove he was a member of the house and that the business was closed, if it was. It seems to me a good deal like a train carrying a man to a horse race and he said if the train had not run off the track he would have won a bet on the horse race.

47 Mr. DEXTER: The purpose is not to anticipate any problematical or anticipative profits in advance, but so long as he remained with the firm what were the profits and losses both before the attachment and after the attachment and up to the time when he left the firm.

The COURT: I understand the purpose is not to prove what they might have sold. He proposes to show what business the firm had actually been doing and what business they did afterwards. Now, whether this difference in the amount of business, if there was a difference, arose from the attachment or not, is for the jury to judge. I will let you ask that question.

Q. Can you state, Mr. Perez, what, if any, were the profits you enjoyed as a member of that partnership in the year 1899?

Ans. From 38 to 40%, because it was divided into 50% on the capital.

Mr. CORNWELL: I object to the answer as it is not in reply to the question.

The COURT: I will let it go in. Proceed.

Q. How long after this attachment did you remain associated with that firm?

Ans. I continued until March of this year.

Q. What did you do then?

Ans. Then I became a silent partner, at the suggestion of friends in the capital.

Q. Please state whether you retired from the house of Perez Ramos & Co.?

Ans. My friends in this city told me——

The COURT: That is not competent.

Q. State whether or not any of your creditors made any complaints which induced you to take this action?

Mr. CORNWELL: I object to the question because it is not competent.

The COURT: I do not exactly see how that is competent.

Mr. DEXTER: On the theory that he was induced to take this action by reason of the creditors, compelling him to retire, because they had no further confidence in the house, after this attachment,

and after this attachment it would not do for him to remain in the house.

The COURT: Well, proceed.

Q. I will ask you whether any representations were made to you by your creditors, or the creditors of the house of Perez Ramos y Compañia about the advisability of your retiring?

The COURT: I do not think that is competent.

48 Q. State w-ther any action was taken by the creditors, your creditors, or the creditors of your house about that time?

Ans. In Mayaguez there was nothin- owing. In respect to the house, no sir. We did not owe anything to the market here. In regard to the capital, I presented myself to the houses to whom I was owing, and I told them what was occurring in order that they might not act contrarywise and from that moment they extended considerations to us.

Q. Please state from what houses, or persons, you were receiving credit at that time?

The COURT: When was this?

Mr. DEXTER: On January 4th 1900.

Mr. CORNWELL: I object because the question is not material.

The COURT: I do not know; they might follow it up and show that the credit was withdrawn because of the attachment. This might be very material if done in consequence of the attachment on the plaintiff's property.

Q. was read to witness.

Ans. To Sucesores de Villamil, to Ochon Hermanos, Sucesores de Lopez y Compañia.

Q. How long prior to that time had you and your house been receiving credit from these parties?

Mr. CORNWELL: I object as it is not competent.

The COURT: I will let him ask it; go ahead.

Q. was repeated.

Ans. For very many years.

Q. Can you state, approximately, the amount you owed these houses on January 2nd. 1900?

Ans. The——

The COURT: That is immaterial

Q. After January 4th. 1900, please state whether you and your house were able to obtain credit from these houses?

Objection by counsel for defence as question is immaterial.

The COURT: I do not know; it may be material; ask him the question.

Q. was repeated.

Ans. With these gentlemen we have continued using our credit.

Q. Since January 4th 1900, have you, or your house, been deprived of any credits which you had enjoyed prior to that time?

Mr. CORNWELL: I object, because it is not competent: They might have been deprived of credit for some other reason.

The COURT: I cannot tell yet. Proceed with the question.

49 Q. was repeated.

Ans. I was, yes; and a great deal to the house also, of course, as was natural.

Q. Please state who these parties were and what was the cause of their refusing credit?

Ans. No party refused credit to the house, because the house did not ask credit, and even if the house had required it they would not have asked it.

Q. Well, about yourself?

Ans. So far as I myself, am concerned, friends like Mr. Manuel Canals, the silent partner of the house of Sucesores de Villamil y Compañia—I have asked him for $2000, and he has not even answered me and before that he would have given me whatever I might have asked him and also other friends here and away from this place, and although before me they have not said it, yet, naturally, they would refuse me credit.

The COURT: State only the facts.

WITNESS: It is positive that my credit suffered greatly.

Q. Prior to January 4th 1900, please state what amount of money, more or less, approximately, you were able to obtain by your credit alone and from whom?

Mr. CORNWELL: It is objected to because it is immaterial.

The COURT: It bears upon the question of his credit; I think you can show that. How much prior to January 4th it might have been ten years prior to it. Read that question again.

Q. was read to the court.

Mr. DEXTER: Your honor is right; I will re-ask it.

Q. Please state whether, within a year prior to January 4th 1900, what amount of money, more or less, you were able to obtain upon your individual credit.

Ans. I could raise a great deal, because my credit was very high.

Q. How much had you been able to raise prior to that time and within that perior?

Mr. CORNWELL: I object to that as it is not material.

The COURT: I think he can show the condition of his credit and in order to do that he may show the amount of money he was able to borrow. Proceed.

Q. How much had you been able to raise within the year prior to January 4th 1900?

Ans. I could have raised any amount I might have wanted amongst my friends, the merchants in the capital, but after that I did not dare to ask anybody for $100.

Mr. CORNWELL: I object to that answer as immaterial.

Q. Why did you not dare to ask?

The COURT: I suppose witness means he had no credit at all after that. I will let that go in. Proceed.

Q. This gentleman that refused to allow you your credit of $2000 00 you stated, I believe he was with the house of Villamil y Compañia. How much credit had you enjoyed with that house before then—a year before then?

Ans. It was Don Manuel Canal, the silent partner of the house. I think they would have given me a credit of $8000 or 10000 pesos. In this case I asked them for only $2000.

Q. State generally, without going into details what was the nature and character of the credit you enjoyed in this community and elsewhere, on and prior to January 4th 1900.

Ans. It was magnificent.

Q. State what credit you had in Europe and in other parts of the world.

Ans. We had credit there and in New York and in Spain.

Objection by Mr. Cornwell as these foreign creditors could not have known of this attachment.

The COURT: They might have been informed. Proceed.

50 Q. Please state whether or not, after January 4th 1900, this credit which you have enjoyed, prior to that time,——

INTERPRETER: I have not translated the answer to the other question.

DEXTER: Well, please translate it.

Ans. I had credit in Hamburg, New York, Barcelona, France, and everywhere I wanted it.

Q. State, whether or not, since January 4th, 1900, and this attachment proceeding you have been unable to obtain credit from any of these parties, either in Porto Rico, or in Europe or other countries?

Ans. We have not asked for any credit out of the island.

Q. But in the island?

Ans. Yes; I have within the island.

Q. Have you received any communication from your creditors since this attachment with reference to refusing you credit?

Mr. Cornwell objects to question as it is immaterial and in addition, is not the proper way to know this fact.

The COURT: You can prove that he has been refused credit, but we cannot go into any letters he may have received.

Q. Have you been told by any of your creditors since January 4th, 1900, that you could not obtain the credit from them that you enjoyed formerly?

Ans. Yes; and then I had to pass into the silent partnership.

Q. Who were those parties, if you remember?

Ans. Mr. Suarez, the active partner of the Sucesion of Villamil y Compañia.

The COURT: I think all you can prove is that this plaintiff had good credit before the attachment and that after the attachment he did not have any credit.

Q. Now, will you state, Mr. Perez, how much you have lost in your credit, otherwise, by reason of this attachment proceeding?

Mr. CORNWELL: I object to that question, because it is incompetent.

The COURT: I will let him ask it. Proceed.

Q. was repeated.

Ans. In money?

Q. Yes, and to your credit also, and otherwise?

Ans. The money which I have spent thus far in it is over $8000. pesos.

Mr. CORNWELL: It is immaterial what money he spent.

The COURT: I think you should confine it, Mr. Dexter, to damages by reason of the attachment.

Q. Now, please state what this $8000. pesos consisted of?

Ans. $1000. in the hands of this gentleman.

Q. What gentleman?

Ans. Mr. Horton, for an agreement which never came about.

Q. Pardon me; do you mean this gentleman or his client, Mr. Fernandez?

Ans. I delivered to the marshal of the court and to Pedro de Castro to deliver to this gentleman for an agreement which never came about.

Q. And Mr. Cornwell was simply representing Mr. Fernandez?

Mr. CORNWELL: I object to it as it is suggestive and immaterial.

The COURT: I do not understand, how, that is competent.

Mr. DEXTER: I do not myself know whether it is competent, but the purpose will be to show that the defendant or the plaintiff rather, paid $1000. by virtue of a proposed compromise which never resulted in anything.

The COURT: It was not a necessary expense. I do not think that is competent.

Q. Please state what expenses you were subjected to in the matter of travelling to defend this proceeding of attachment?

51 Mr. CORNWELL: I object as that is not competent.

The COURT: Cannot he show what expenses he was put to, if this attachment, was sued out without cause, or maliciously? What did you think would be included in damages to a man if an attachment was sued out against him without cause or maliciously? In that case the defendant recovers enough to make him whole. Proceed with the examination.

Q. Please state what sums of money, if any, you paid in travelling expenses for the purpose of defending this attachment suit?

The COURT: What he *necessarily* paid; what they were. Put it that way.

Q. Please state what sums of money, if any, you necessarily paid in travelling expenses in defending the attachment suit?

Ans. It was over $8000. pesos.

Q. I am asking you now about the travelling expenses only.

Answer. About $1200. pesos.

Q. Please state what travelling expenses you were obliged to incur and what trips you had to take in order to defend this attachment suit.?

Ans. I had to make several trips to the capital and I would be a month and a month and a half there.

Mr. CORNWELL: I object to this testimony, because they have not shown that this suit was in San Juan; I do not see the necessity of it.

The COURT: He says they were necessary.

Q. Who did you go to see in San Juan about this case?

Ans. Mr. Keedy; he was my lawyer.

Q. Did Mr. Keedy call you to the capital about this case?

Ans. Yes; several times, and at other times I went myself.

Q. Were there any other Americans lawyers in Mayaguez, except Horton & Cornwell at that time?

Mr. CORNWELL: I object to that question, because it makes no difference if there was one firm of American lawyers in Mayaguez, or a hundred.

The COURT: I think he has a right to go a reasonable distance to employ any lawyer that he wants, and he can show it.

Q. repeated.

Ans. No, sir.

Q. Upon these trips that you made to San Juan to talk to Mr. Keedy what did you discuss—this case or other matters?

The COURT: We will not go into all that.

Q. What other trips, if any, did you make in order to defend this attachment suit?

Mr. CORNWELL; I object to the question because it is leading.

The COURT: I cannot tell. Let us hear what he has to say.

Q. repeated.

Ans. Those to the city. Here I had to abandon all my collections and rents and everything and leave my business.

Q. With reference to the travelling expenses, how much do you say would cover the travelling expenses?

Ans. About $1200. pesos.

Q. What other items, if any, do you claim as damages?

Ans. I estimate the damages very highly.

Q. Those $8000. pesos what are they for?

Ans. Expenses incurred for lawyers, for translations of documents and for a great many other things.

Q. How much did you pay for attorneys' fees in that case?

Ans. I have paid several sums and I owe some yet.

Q. How much does that amount to?

Ans. I calculate everything at $8000. pesos, provincial currency, counting what I have paid and what I owe.

Q. Did you have occasion to consult any other lawyers in this case besides Messrs. Pettingill & Keedy?

Ans. Privately and openly I consulted all the lawyers here in Mayaguez.

52 Q. State just the amount you have paid, and have obligated yourself to pay, for the lawyers you consulted and retained as attorneys in this matter; those that you accepted and considered as attorneys in the case?

Ans. Shall I take into account the $1000 pesos I spoke of?

Q. No, no.

Answer. Some three thousand pesos, provincial money.

Q. Can you state approximately in figures, in dollars, the amount which your credit has been injured, if at all, by reason of this attachment?

The COURT: That is a matter for the jury.

Q. What amount of money, if any, did you lose in any other respect on account of this attachment?—lost of time and profits to your business, if any?

Mr. CORNWELL: I think that question is incompetent.

The COURT: He can prove any other money that he necessarily paid out on account of this suit.

Q. was repeated.

Ans. I consider as expense some $5,000 *dollars* with what I have paid and what I now owe, and as damages suffered——

The COURT: He can testify to the facts and the jury can fix the damages.

Q. How has your business interest, both personal and as a partner of your house, been affected, and your credit been affected by that attachment? What effect has it had on your business?

Ans. I had said the report have been current that I have been both in person——

The COURT: I think this witness has gone over very fully, what effect this had on his credit, and unless there is something new, we had better go to something else.

Q. I believe you stated that you retired from the firm of Perez Ramos y Compañia in April of this year, isn't that correct?

Ans. Yes.

Q. State whether or not, prior to January 4th 1900, you had concealed or disposed of any property so as to prevent your creditors from securing any judgment against you.

Mr. CORNWELL: I object to the question, because it is leading.

The COURT: I do not think it is leading, and I will permit it to be asked; that is the very ground upon which the attachment was sued out.

Q. State whether or not, prior to January 4th 1900, you had disposed of any of your property, or concealed it so as to prevent your creditors from enforcing a judgment against it?

Ans. No, sir; I had not.

Q. State what properties and assets, in a general character, you had on the 4th day of January, 1900, with which to pay these debts?

Ans. I have got a note of them; Mr. Dexter has the note.

Q. Speaking in a general way, I mean; I do not want you to go into details. Did you have any other property besides this house?

Ans. I have two more. I hav- a coffee farm; three cities properties and a coffee plantation, and besides other goods and other city properties, and my capital there in the firm of Infanzon & Co.

Q. On January 4th 1900, approximately, making a general estimate—what were your assets with which your creditors could have been paid at that time?

Ans. About $40,000 pesos, provincial money; that is, in the two commercial houses of Perez Ramos & Co., and Infanzon and Co., which is now in liquidation. I did not owe anything to anybody, and besides the shares which I have in the railway between Lares and Añasco. and other credits.

53 Q. How much did all that amount to, approximately?

Ans. I calculated my credit at seventy thousand (70,000) pesos, provincial currency. I calculated that I must have had some fifty thousand pesos over and above my debts.

Q. Before this attachment suit, what conversation, if any, did you have with Mr. Fernandez with reference to paying that debt due to the estate of Claudio Barros?

Ans. I was at the house of Mr. Fernandez several times in reference to the matter, in spite of the fact that since the year 1892 we did not speak to each other.

Mr. CORNWELL: I move to have the answer stricken out as it is not responsive to the question.

The COURT: Let him go ahead and get through with it. What was the conversation?

(Witness continuing:) Mr. Fernandez spoke to our silent partner, Mr. Infanzon.

Q. Were you there?

Ans. No, sir.

Q. Testify only to the conversation you had with Mr. Fernandez.

Ans. I had a conversation with Mr. Fernandez with a view of arranging this affair, and I went to his house, and he claimed sums which I did not owe. I went three or four times, and seeing how he was, I said it was impossible for me to come to an agreement with this man. At no time during these visits did he ever show me his power of attorney.

Q. And why was it that you did not pay that money to Mr. Fernandez?

The COURT: I do not think that is competent.

Q. State whether or not any threats were made by Mr. Fernandez, and if so, what they were?

Mr. CORNWELL: I object to that because it is not competent.
The COURT: It may be competent. Gentlemen, the gist of this action is whether there was proper cause on Fernandez' part to sue out this attachment, and whethe- it was done with malice. Continue.

Q. Were any threats made by Mr. Fernandez with reference to this matter and the attachment suit?
Ans. Not with the attachment, but with this affair.
Q. Before the attachment?
Ans. Before the attachment he told me himself that they were going to attach me; he himself told me that when I went to complain to him and he threatened to bring me before the court and I asked him not to bring me before the court on account of the damage it might cause me; and then he told me that I would have to go to the court, and I would know what it would cost me to speak to an American lawyer.

Mr. CORNWELL: I object to all that testimony because it is not competent.
The COURT: I think that conversation with the defendant is competent.

Q. Did you discuss with Mr. Fernandez his right to bring any such attachment, before it was brought?

The COURT: Do not lead him.

Q. What was stated by you to Mr. Fernandez with reference to his right to bring such attachment proceeding?

Mr. CORNWELL: I object because the question is leading.
The COURT: I think he can call the attention of the witness to any part of the subject talked about.

Q. was repeated.
Ans. I went there to his house and I told him that it seemed incredible that after having come to his house, after being so many years without speaking to each other, that he should want to bring me before a court like that; that I did not understand that court, and that after so many misfortunes that I had suffered that I should be bro-ght before a court of which I was greatly in fear.——

54 Mr. CORNWELL: I object to that as it is only stating his feelings.
The COURT: The witness has a right to relate the conversation.

Q. Did you have any conversation with Mr. Fernandez, before he brought the attachment proceeding, as to what reason you had, why

you refused to pay the debt, or as to why he could not bring any attachment proceeding?

The COURT: That is objectionable as to the debt.

Q. Did you have any conversation with Mr. Fernandez before he brought the attachment proceeding as to whether he had the right to bring the attachment proceeding?

Mr. CORNWELL: I object to that your honor, it is not competent.

The COURT: Suppose he told Mr. Fernandez that he had fifty thousand dollars, and this building, and that building, and the debt was for only five thousand dollars, don't you think it competent for him to tell Fernandez that—he could pay the debt without any attachment being issued against him for it? Proceed with the question.

Q. was repeated.

Ans. Not with him, but with the lawyers.

Q. Did you, or your attorneys, discuss that matter with Mr. Fernandez as to your ability to pay the debt and the reason why the attachment should not be sue- out?

The COURT: That is objectionable. He cannot testify as to what his lawyers did; he must testify as to his own actions.

Q. Was anything said by you to Mr. Fernandez about your ability to pay this debt without attachment, and as to whether he should not bring the attachment?

Ans. I knew that Mr. Fernandez was not the man to collect from me, and I——

The COURT: That is not competent.

Q. Did you ever have any conversation with Mr. Fernandez about bringing the attachment proceeding?

Ans. No, sir; he brought the suit without telling me anything about it.

Q. In what manner was this attachment, and notice of attachment, served upon your property?

Ans. I was in the capital when it was placed there.

Q. Did you see the notice when you returned?

Ans. It seemed that the wind or the rain had destroyed it but my partners saw it, and the nails are there yet. I was in the capital for a month at that time.

Q. Immediately following this attachment proceeding, what demands, if any, were made upon you by your creditors—immediately following?

Ans. They did nothing, but they were doubtful.

Q. Were bills and claims presented immediately afterwards?

Ans. No. I cannot say that anybody said exactly—"We cannot collect from you on that account," but the house of Fritze, Lundt y Cia. collected from my partner a private note which I had in the house, and they did not say why they wanted to collect it, and it had been there a long time previously.

Cross examination.

By Mr. CORNWELL:

Q. Was that note due and payable?

Ans. Yes, from the day I gave it — was due; it was a long time overdue.

Q. How much money did you say you owed to the estate of Claudio Barros?

Ans. I think it was something like six or seven thousand pesos.

Q. What did you say your wealth was, approximately, on January 4th 1900?

Ans. I calculated that I had some seventy thousand pesos, provincial and with what I owed deducted from it, I calculated I had about fifty thousand or forty five thousand pesos.

Q. When you spoke first about settling this account due to
55 the estate of Claudio Barro, was your property mortgaged?

Ans. Yes, it was.

Q. When did you first speak to Mr. Fernandez about this settlement?

Ans. About the end of November, I think, it was in 1899.

Q. Was it not about the first of December?

Ans. I do not remember exactly when it was, but when I went to the country, I received this letter (producing same).

Q. What is the date of that letter?

Ans. The 18th of January.

Q. Was that the time that you spoke to Mr. Fernandez?

Ans. No, that was some time before; in November or December.

Q. Your property was not mortgaged at the time you spoke to Mr. Fernandez?

Ans. Yes; it was mortgaged.

Q. And you owed the amount of money you were sued for?

Mr. DEXTER: I do not think that is competent, may it please the court.

The COURT: I do not think it is competent. He has already said he owed Barros so much money.

Q. Is that a mortgage on your property? (Handing witness a paper.)

Ans. It appears to be that. I will have to read it (reads it). Yes; that is the mortgage.

Mr. CORNWELL: I now offer this mortgage in evidence.

Mr. DEXTER: I object to it as incompetent, irrelevant and immaterial.

The COURT: What is it?

Mr. CORNWELL: This is a mortgage made on all the properties of Mr. Perez; made about the time of these law suits and covers all his property. The date of the attachment was January 2nd, and this mortgage was made on November 10th, 1899, before that time.

The COURT: I will permot you to offer it: it is only a mortgage, is it not?

Mr. CORNWELL: Yes.

Whereupon said mortgage was offered and introduced in evidence, and a translation thereof duly certified by the official interpreter of this court is in words and figures following to wit:

COPY OF EXHIBIT "A" FOR THE DEFENDANT.

No. 973.

In the city of Mayaguez, December 10th, 1899.

Before me, Mariano Riera Palmer, l-wyer, resident of Mayaguez and notary public of the same and of the illustrious College of Porto Rico and witnesses at the end mentioned, appear: Don Jose Perez y Fernandez, of age, married, merchant and resident of this city. I give credit to know him, his profession, and residence and he, assuring me to be enjoying his civil rights and believing he has the necessary legal capacity to go into this deed of voluntary mortgage, he says:

First. That he is the owner of the following property: a wall house measuring 22 "varas" front, same being equivalent to 18 metres, 38 centimetres, 98 millimetres; and 10 "varas" in length, same being equivalent to 8 metres, 35 centimetres, 90 millimetres, and a shed of all the length of the house, being 2 varas wide, same being equivalent to one metre, 75 centimetres and 18 millimetres, said shed is annexed to said house and it and the lot which belongs to him is situated in the "Barrio Septentional" in this city. Said lot measures 22 varas at the front, which metrical equivalent has been said, and 37 varas long, being equivalent to 30 metres, 92 centimetres, 83 millimetres, being bounded on the north by the
56 property which was of Don Honorato Fernandez; on the south by the river; on the east the street going to "La Puntilla," and whereby the said house has one of its fronts, and the west by said river and the sea. He owns said property because he bought it from Don Claudio Barro y Fernandez, as it is stated in a deed issued in Santa Eulalia de Collato (Consejo de Oviedo, Spain) the 25th of August 1897, before the notary of said town Don Cipriano A. Pedrosa, a first copy of which is shown to me for this act and which appears recorded at the registrar of property, folio 250, volume 36, of this city, property 869, duplicate, fourth inscription; this property being free from responsibilities or obligations.

Second. One parcel of land which superficial extension is 50 cuerdas, which are equivalent to 19 hectares, 65 ares and 19 centares, which are dedicated to the planting of coffee, bananas and to pasture and situated in the Barrio of "Bucarabones" of the municipality of Las Marias; a wooden house, roofed with galvanized iron, low by its front, and there being in front of it a grinding meal- for coffee, with a wooden kitchen covered with zinc; a small house with a grinding mill for coffee moved by water; a water tank for washing said fruit; three explanades for drying; and two small wooden houses covered with zinc; said parcel of land is bounded on the north by lands the property of Don Emilio Gomez and Don Martin Daud;

on the west by the Rio Grande; on the south by lands the properties of Don Felix Monsegur, on the east by the coffee plantation of Don Bernardo Daud. And another parcel of land, situated in the barrio before named "Jurnia" and now "Palma Escrita," municipality of Las Marias, said parcel of land has an extension of about 35 cuerdas equivalent to 13 hectares, 78 ar*eas* and 69 centiar*eas*; being bounded on the south by property which was before of Don Carlos Gaud and Jose Laplaza's wife and thence in a straight line to a "Tartago" on the top of a hill; thence in a western direction the same boundary and lands of the plantation of Don José Sauveterre and Señor Delgado, to a "balla," in a straight line to a "Tartago" before a high palm, limiting the lands with property of the heirs of Monsegur to a "laurel" at the shores of the Rio Grande, thence following the creek shores to a "higuerillo," the place by which it was begun. The two rustic properties above described were acqquired by him by buying them from Doña Jobita Denizar, according to a deed issued before me on the 17th of February 1897, a fresh copy of which is shown to me for this act and which does not appear to have been recorded in the registrar of property.

Third. One rustic property or parcel of land being planted in coffee, bananas, pastures, brambles and briars; consisting of about 14 cuerdas being equivalent to 5 hectar*eas*, 60 ar*eas*, 25 centar*eas*, and 4 milliar*eas*; in the barrio of "Bucarabones" formerly named "Jurnes" site called "Palma Escrita" municipal district of Las Marias, judicial district of this city. Said parcel of land is bounded on the south by lands before the property of Don Carlos Gaud, and now of Don Juan Aguasvivas; on the east by lands the property of Jose Laplaza, on the north by other lands, the property of Justo Gaud; on the west by a river called "Guabas." Besides these it is surveyed, beginning on the east from a "tartago," from thence the same direction to the north to another "tartago;" from thence towards the west with turns and returnings to an oak tree at the shores of the River "Guabas;" from here upwards the river to a "Collor' palm, and from here in a straight line to the part wherefrom it was begun. He acquores the said property by buying it from Don Gerarso Gonzalez according to a deed issued before Don Juan Z. Rodriguez, who is a notary of this city on the 5th of February 1897 which first copy is shown to me and which does not appear recorded in the registry of property.

57 Fourth. A wooden house covered with roof tile on Minerva street, of this city, marked No. 6, and lot on which it is built and all its dependencies; measuring 12 metres, 75 centimetres from the front, 13 metres and 80 centimetres at the side; being bounded: entering by the right hand side by a house the property of Don Jaime Busquet; entering by the left hand side by another house the property of the heirs of Don Valentin Torrens; and on its back by that of Maria Garcia; the front being on the north, it is bounded on that side by said Minerva street. He acquired this property by buying it from Don Salvador Mestre according to a document issued before me on the 30th of Decembre 1892, a first copy of which is shown to me for this act which appears recorded on the registry of property at

folio 136, volume 25 of this city, property No. 1567, inscription 2nd. Said house does not exist now because it has been destroyed.

Fifth. A brick house covered with roof tile, with all its dependencies on Carcel street, now named Peral street, where the front of said house is and with which it limits on the west, making a corner with Minerva street, both of this city, and whereby it has its wooden balcony, being marked No. 10, measuring by the front 17 metres, 48 centimetres, by its right side, that is by the north and by Minerva street, five metres, 61 centimetres, by the left that is by the south whereby it is bounded by a house the property of Don Miguel Pinillo, 8 metres and 75 centimetres, and by its back that is by the east, thereby it is limited by a house the property of Silvain Martinez and Carlos Cordero, 17 metres, 82 centimetres. It is bui-t on a lot of the same dimensions, which also belongs to him. He owns said property because he bought it from Doña Julia Bernar according to a deed made before me on the 12th day of January 1893, the first copy of it being shown me for this contract and it appears recorded in the registry of property, folio 103 and over, volume 3rd of this city, property 173, inscription 5th. Said house does not exist because it has been destroyed.

Sixth. A wooden house (half high) tile covered, with a balcony at the front on Sol street of this city, having the front on the south, with its kitchen and dependencies, being bound on its right side, that is, the east by the property of Don Simon Maderas; on the left side, that is, on the west, by a house the property of Don Manuel Pinillo, and on its back, that is, on the north, by another house the property of Silvain Martinez, being marked No. 26, being 10 varas long by front, same being equivalent to 8 metres, 35 centimetres, 90 millimetres and 9 varas long at the side being equivalent to 7 metres, 52 centimetres, 31 millimetres. It is built on a lot that also belongs to him, the same being 13 varas long at the front, which is equivalent to 10 metres 86 centimetres, 67 millimetres and 18 varas long at the side, equivalent to 15 metres, 4 centimetres, 62 millimetres. Said property belongs to him by buying it from Doña Maria and Doña Antonia Garcia, according to deed made before the notary of the capital of this lawyer, Lawyer Don Jose Agustin de la Torre, on the 10th say of May 1894 and on the 22nd day of May 1899, before the notary of Habana, Don Francisco de Castro y Vasquez, which first copies are shown to me for this contract, and which are recorded in the registry of property. Said house does not exist, because it has been destroyed by fire.

Grouping of properties.

2nd. That the lots described under Nos. 4, 5 and 6 actually form one sole property, and which he hereby groups that they may be recorded at the registry of property as one sole property with one sole number for all of them, and the result of said grouping is as follows: A lot having one front on Peral street whereby it is bounded on the west, measuring 17 metres, 26 centimetres; on the north, by Minerva street whereby — measures 18 metres,

39 centimetres; it is bounded on the east by the house of Lawyer Don Francisco Pellegri, and lot of Don Eusebio Brian whereby it measures 28 metres, 84 centimetres, and on the south
58 by Sol street and the house the property of the heirs of Pinillos, whereby it measures 10 metres, 86 centimetres, 67 millimetres; on which lot exists a brick house two stories high, the second floor being destinated to residences, and the first to stores, the same being covered with zinc and having a balcony on the side of Peral street, and a small brick balcony on the side of Minerva street with no number. The same measures 17 metres and 48 centimetres at the front and 18 metres, 35 centimetres long at the sides.

Confession of debt.

3rd. Señor Perez y Fernandez confesses and acknowledges to owe Don Victor Ochoa y Perez, of age, widower, merchant, resident in the Asturias and of the vicinity of the capital of this island, the sum of twenty thousand pesos, P. R. currency, which said gentleman has given him for different purposes.

Payment.

That he obliges himself to pay to his creditor Señor Ochoa, the sum of twenty thousand ($20,000.00) pesos which he owes him, within the term of five (5) years counting from this date, without premium or interest.

Mortgage.

5th. To guarantee the aforesaid obligation the debtor, Señor Perez y Fernandez, specially mortgages in favor of creditor, Don Victor Ochoa y Perez, the properties described under numbers 1, 2 and 3 and the groupings of the ones under numbers 4, 5 and 6 with house, and the rest which constitutes it. Said properties remain with said obligation until all debts to be paid.

6th. According to what is provided by the mortgage law "Ley Hipotecaria," the grantor distributes the capital of said obligation in the following way: The house described in the first place will be responsible for $2000.00 capital; the property of 50 cuerdas described in the second place, will be responsible for $1500.00 of capital; the one of 35 cuerdas will be responsible for $1500.00 of capital; the one described of number 3 of about 14 cuerdas, shall answer $2000.00 of capital; and the property formed by groupings made in the second clause will answer for 12000.00 of the amount of the debt.

7th. According to what is provided by paragraph 137 of the mortgage law, the appearer assesses the mortgaged properties, renouncing all new valuations, or action with this purpose in the following way:

The first in the sum of $3000.00 of currency.

The second of 50 cuerdas in the sum of $5000.00.

The third of 35 cuerdas in the sum of $3000.00.

The one described under No. 3 of 14 cuerdas in $3000.00.

The one resulting from the groupings before made in the sum of $14000.00.

Notification.

I, the notary, notified them that: confessed, as it is, the debt, there is no place for any exception of its not being true, therefore, the properties mortgaged by this deed are obliged to the responsibility of the same, though it should be proved afterwards that it was not received in all or in part; that the preferred legal mortgage which the province and municipalities of this city and Las Marias have any other creditor for the collection of the last annuality of taxes not satisfied by the mortgaged properties is in favor of
59 said province and municipality; that this deed must be recorded in the registry of properties in this city, that without said requisite it will not prejudice any third person, neither will it be admissible before any court, council or office of the government. So it is consented to and signed by the witnesses, Don Jose Carmona and Don Luis Cardona residing in this city, previous reading that in only one act I did to all, and advised them of the right granted to them by the law to read it by themselves, of which I give credit.

JOSE PEREZ Y FERNANDEZ,
(Signed) MARIANO RIERA PALMER, *Lawyer.*
JOSE CARMONA,
LUIS M. CARDONA.

It corresponds faithfully with the original deed, which, under number firstly said (973) is filed in the protocol of this notary in my charge. Crediting it and being asked by Señor Don Jose Fernandez, I issue this copy in eight sheets of paper.

Mayaguez November 20th, 1901.
(Signed) MARIANO RIERA PALMER, *Lawyer.*

The foregoing is a true and faithful translation of its original.
(Signed) Z. VALS ESPINOSA,
Interpreter United States District Court for Porto Rico.

Mr. DEXTER: In order to get a decision from the court as to a certain question of law, I renew now my objection to the introduction of this mortgage as testimony for the reason that it is immaterial, irrelevant and incompetent testimony, and is irrelevant and immaterial to the question of want of proper cause or malice in this case.

(The court orders the jury to retire during the argument.)

Mr. Dexter argues at length stating that the question of malicious prosecution, as well as actual damages and wrongful attachment enter into this case, and cites and reads the following law:

Am. & Eng. Ency. Law, pp. 244-245 (Attachment—a—.)
Mitchel *vs.* Mattingly, 1st. Metcalf, 237.
Kennedy *vs.* Meachem, 18 Fed. Rep., 212.
Tybier *vs.* Alford, 12th Fed. Rep., 262 (C. C. La.)

Mr. Cornwell and Mr. Horton replied.

The COURT: Well, let us proceed with the case. I will let that testimony be offered at present. I will control it afterwards.

(Plaintiff excepts.)

(The jury returned to their places.)
The COURT: Proceed Mr. Cornwell.

By Mr. CORNWELL:

Q. When did your partnership papers with the house of Perez Ramos & Co. expired?
Ans. In 1898.
Q. And you operated from 1898 up to March of this year without partnership papers?
Ans. Prorogues of extensions have been made.
Q. When was the termination of the last prorrogation?
Ans. In 1900.
Q. Are you a member of the Sucesores of Perez Ramos & Co. of the succeeding firm?
Ans. I was an active partner of the previous one and am a silent partner of the present one.
60 Q. What is your present business now?
Ans. Now? I have several in project but I am not undertaking any in full.
Q. Was Victor Ochoa y Perez here when you made this mortgage?
Ans. No, sir; he was in Spain.
Q. Did you take this mortgage to the registrar's office to have it registered?
Ans. No, sir; my partner took it there.
Q. When did you have it registered?
Ans. I do not know; it was when I was in the capital. I have the order for its registration.
Q. When did you return from San Juan at the time of this mortgage?
Ans. I think it was when the court came here for the first time; I cannot be sure about it.
Q. Were you in the city the day Mr. Lutz served the writ of attachment on that property in Mayaguez?
Ans. At what date?
Q. The date of the attachment; when the writ of attachment was posted on your door, were you in the city of Mayaguez?
Ans. No, sir, I was not. I was in the capital. I left here on the 31st of December, 1899, and arrived in the capital on the 1st of January, 1900.
Q. Did you not try to settle this suit by an amicable arrangement?

Mr. Dexter objects to the question.
The COURT: Settle what suit?
Mr. CORNWALL: This attachment suit. It was a proper suit.
The COURT: The question is on the attachment, whether it was a wrongfull and malicious attachment, and not whether this was a proper suit.
Mr. CORNWALL: That is all we want to ask.

In rebuttal.

By Mr. DEXTER:

Q. This mortgage that has been shown you, for what was it executed?

Mr. CORNWELL: I object to that as the mortgage will show for itself.

The COURT: Read that mortgage again. I want to hear that part of it.

Mortgage was re-read.

The COURT: Proceed with the question.

Q. Please state, Mr. Perez, whether you owed money to Mr. Victor Ochoa, the twenty thousand pesos represented in this mortgage, at that date?

Mr. CORNWELL: I object to the question as the mortgage shows for itself and that is the best evidence.

The COURT: Let him answer the question.

Q. was repeated.

Ans. Yes, to Victor Ochoa.

Q. What was that indebtedness for?

Ans. For various business that I had in project and for other payments.

Q. State whether or not Mr. Victor Ochoa had advanced you an equivalent amount of money or property prior to this time as stated in this mortgage?

Mr. Cornwell objects as the mortgage ought to state all that.

The COURT: Well, I will hear what he has to say about it.

Q. State whether or not Mr. Victor Ochoa had facilitated to you with this amount of money prior to this time as stated in this mortgage?

Ans. Yes.

Q. State what amount of business, and the nature of the transactions you had had prior to that time with that gentleman?

The COURT: I do not think that is competent.

Q. Did this mortgage cover all the property you had at that time?

Mr. CORNWELL: I object to the question as the mortgage itself shows it covered all his property.

The COURT: We do not know; let him go on and answer the question.

61 Q. Did this mortgage cover all the property you had at that time?

Ans. A small part of it only.

Mr. DEXTER: That is all.

And thereupon, further to maintain said issues, said plaintiff introduced as witness in his behalf one, LUIS BRAVO, who, after being duly sworn testified as follows:

(Direct examination.)

By Mr. DEXTER:

Q. What is your name?
Ans. Luis Bravo.
Q. Have you been a resident of Mayaguez for many years?
Ans. Yes.
Q. What is your business?
Ans. I am a merchant.
Q. How long have you been in that business in Porto Rico?
Ans. Fifty-two years.
Q. Your business is an important one, and the nature of its transactions are important?
Ans. Yes.
Q. Do you know Mr. Perez, the plaintiff in this case?
Ans. I have known him since he arrived on the island.
Q. How long ago was that?
Ans. I cannot say precisely; probably ten or fifteen years.
Q. Do you know the character and credit which Mr. Perez enjoyed in this community up to and prior to January 4th, 1900?

Mr. CORNWELL: I object to the question because it has nothing to do with this case.
The COURT: I think it is competent. Let him proceed.

Q. was repeated.
Ans. Yes.
Q. What was it, good or bad?
Ans. It was good.
Q. Had you had occasion to know approximately the amount of credit which Mr. Perez enjoyed in this community?
Ans. No, sir; I could not precise that, but it was to a certain extent, probably fifteen or twenty thousand dollars.
Q. Do you know whether or not that credit or standing which he had in the business community was affected by a certain attachment suit instituted against him?
Ans. I do not think so. I know that any merchant who has a case like that it always affects him in some way or other.
Q. But do you know *not* of any particular occasion?
Ans. No, sir.

Cross-examination:

Q. Have you personally ever done any business with Mr. Perez?
Ans. Yes, sir.
Q. Most of it was in the house of Perez, Ramos & Co., was it not?
Ans. Perez, Ramos & Co., yes.
Q. When you referred to the credit of fifteen or twenty thousand pesos, you referred to the credit of the house, *do* you not?

Ans. Yes, sir.
Q. And you do not refer to any individual credit of Mr. Perez?
Ans. No, sir.

In rebuttal.

By Mr. DEXTER:

Q. What was the character of Mr. Perez in this community as a business man?
Ans. That is good also, he has always been honorable in his dealings.
62 Q. Had you heard at any time, or did you know, particularly on or about the 4th of January, 1900, that he had parted with, or concealed any of his goods?

The COURT: I do not think that is competent.
Dexter argues the point.
The COURT: Ask him and let us get through.

Q. Do you know whether Mr. Perez, prior to January 4th 1900, had disposed of or concealed any of his goods for the purpose of avoiding the payment of any of his debts?
Ans. I am not aware of it. I never heard of it.
The COURT: And you do not know anything about that one way or the other?
Ans. No, sir.

And thereupon further to maintain the said issues said plaintiff introduced as a witness in his behalf one HUBERT KOBERG, who after being duly sworn testified as follows:

Witness, HUBERT KOBERG, for plaintiff.

Direct examination.

By Mr. DEXTER:

Q. Please state your name and occupation?
Ans. I am a merchant, my name is Hubert Koberg.
Q. What house are you connected with?
Ans. Fritze Lundt & Co.
Q. How long have you been in Porto Rico?
Ans. About ten years.
Q. What is the character of the business transacted by the house of Fritze Lundt & Co.?
Ans. Export and import and banking.
Q. How long have they been in that business here?
Ans. About eight years under the style of Fritze Lundt & Co.
Q. Do you know Mr. Perez, the plaintiff in this case?
Ans. Yes.
Q. Do you know what his character and reputation and credit as a business man of this community was prior to January 4th 1900?
Ans. Yes.

Q. How long had you known him and of his credit in this community as a business man prior to that time?

Mr. Cornwell objects to the question, stating it is leading.
The COURT: That is not leading, proceed.

Q. was repeated.
Ans. About all the time I have been in Porto Rico; about eight or nine years.
Q. Have you or your house had any transaction with Mr. Perez in the matter of extension of credit?
Ans. With this house, yes.
Q. Have you had any on account of Mr. Perez himself?
Ans. Some years ago; several years ago.
Q. What was the credit of Mr. Perez, in this community, so far as you know; was it good or bad?
Ans. It was a good credit.
Q. State whether or not he personally, or for his house, had carried any credits with your house?

Mr. CORNWELL: I object to anything about the house as we are not inquiring into the credit of the house.
The COURT: Proceed with the question. You can cross-examine him about that.

Q. was repeated.
Ans. Yes.
Q. Do you know who was the principal member of the firm of Perez Ramos & Co.?
Ans. Yes.
Q. Who was it?
Ans. Mr. José Perez and Mr. Lucas Ramos.
63 Q. Did you extend credit to him personally, or to his house of Perez Ramos & Co.?
Ans. Of course I did; it was his house.
Q. Did you do it through him or to him?
Ans. Through him, yes.
Q. Was that credit good or bad?
Ans. It was a good credit.
Q. Are you able to state how much credit he had?
Ans. I am not certain about that.
Q. Do you know of the attachment proceeding that was brought against him, in January 1900?
Ans. I heard something about it; yes.
Q. Did that attachment proceeding have any effect upon his credit in this community as a business man?
Ans. Yes.
Q. Are you able to state to what extent, approximately, and in what way it did have effect upon Mr. Perez?
Ans. He did not have so much credit; he had less credit.
Q. Did it destroy all his credit, or to a certain extent?
Ans. No, not all but to a certain extent, yes.

Q. Seriously, or slightly?
Ans. I cannot say that; I do not know that.

Cross examination.

By Mr. CORNWELL:

Q. You really do not know, of your own knowledge, whether it injured his credit at all?
Ans. Yes, it certainly injured his credit.
Q. Would it have hurt him in buying goods in the market?
Ans. Well, in some cases, yes; some times.
Q. You think it would have made some difference?
Ans. Yes.
Q. Are you referring to the personal credit of Mr. Perez, or to his house?
Ans. To his personal credit.
Q. You do not know that personally he ever had any credit? You knew though his house had credit?
Ans. Mr. Perez had also credit.
Q. And you think that suit destroyed that credit?
Ans. In a certain way, and at times, yes.
Q. It may have temporarily have injured his credit, but not permanently?
Ans. Not permanently, no.
Q. His credit now is as good as ever?
Ans. He does not ask any credit.

In rebuttal.

By Mr. DEXTER:

Q. Did not Mr. Perez, for himself, or representing his house, carry large credits from time to time with your house before January 1900?
Ans. Several years ago, yes.

Recross-examination:

Q. In recent years he has not; in the last two or three years he has not.
Ans. No.

64 And thereupon, further to maintain said issues, said plaintiff introduced as a witness FREDERICK PHILLIPPI, who, after being duly sworn testified as follows:

Witness, FREDERICK PHILLIPPI, for plaintiff.

(Direct examination.)

By Mr. DEXTER:

Q. Please state your name, occupation and residence?
Ans. Frederick Phillippe, I am a merchant and live in Mayaguez.
Q. How long have you lived in Mayaguez?

Ans. Twenty-nine years.

Q. What class of business have you been engaged in?

Ans. General merchandise. Importing; exporting; and buying coffee.

Q. Do you know Mr. Perez, the plaintiff in this case?

Ans. I know him, yes.

Q. How long have you known him?

Ans. About fifteen years.

Q. Do you know what was the credit and standing of Mr. Perez in this community as a business man prior to January 4th, 1900?

Ans. His credit and standing was good.

Q. Do you know whether or not on January 4th, 1900, or prior to that time, Mr. Perez had disposed of any of his property for the purpose of defrauding his creditors?

Ans. I had not heard anything about that.

Q. Do you know of a certain attachment suit brought against Mr. Perez in the provisional court by Mr. Fernandez?

Ans. I had heard something of that,

Q. Do you know whether or not Mr. Perez' credit in this community as a business man has been injured by this attachment suit?

Ans. I do not think so.

Q. Is it your judgment that since the time the attachment suit was brought that Mr. Perez could get the same credit as before in the commercial world where he had been accustomed to get credits previously?

Ans. I cannot give any judgment about that. Credits have been changed very much. All the people in the country——

Q. I am not asking you about any specific case but I am asking you as a business man here in Mayaguez whether or not the attachment of a merchant's property—valued at fourteen or fifteen thousand pesos, and the merchant having seventy thousand pesos worth of property, whether——

Mr. CORNWELL (interrupting): I object to that your honor. Let the witness testify to facts and not to any suppositions.

The COURT: I think he can ask a question bases on a supposition.

Q. was repeated with the addition: An attachment suit brought against such a merchant for the sum of thirty-two hundred pesos do you think such an attachment proceeding would, or would not, affaect the credit of such merchant?

Ans. For thirty-two hundred pesos.

Q. Yes.

Ans. No.

Q. Do you think that an attachment suit for an amount of that kind would affect his credit?

Ans. Of a merchant of such means?

Q. Yes.

Ans. No.

Q. You think that persons not living in the community but liv-

ing abroad and being advised of that suit, don't you think that that would affect his credit with them?

Ans. It might in some cases. I cannot judge of this particular case; I have not heard about it.

Q. You mean to say that you do not know whether his credit was affected or not, do you not?

Ans. I do not know whether it was affected or not. I cannot give any opinion in that question.

Mr. DEXTER: That is all.

Mr. CORNWELL: No cross-examination.

65 And thereupon further to maintain said issues, said plaintiff introduced as a witness ALFRED KOESTER, who, after being duly sworn, testified as follows:

(Direct examination.)

By Mr. DEXTER:

Q. Please state your name?

Ans. Alfred Koester.

Q. What business house are you connected with, if any?

Ans. Moral y Cia.

Q. Where do they do business?

Ans. In Mayaguez.

Q. How long have you lived in Mayaguez?

Ans. Three years.

Q. How long has your house been doing business here?

Ans. I could not say; a number of years.

Q. What kind of business do you do?

Ans. Export and import; buying coffee sugar and molassess, and importing provissions from the States.

Q. Please state whether or not you know José Perez, the plaintiff in this case?

Ans. Yes, I know him.

Q. State whether or not you knew his reputation and credit as a business man in this community prior to January 4th, 1900?

Ans. His credit was good.

Q. Could you estimate to about what extent that credit was good?

Ans. I could not fix the amount.

Q. Approximately?

Ans. No, I could not tell.

Q. Did you, or your house, do any transactions in the way of credits to Mr. Perez?

—. Yes, a good deal.

Q. For how many years back?

Ans. Since I have been in the house for three years. We did quite a large business with him.

Q. Could you approximate the amount of credits you carried with him?

Ans. No.

Q. Were they of importance or slight?
Ans. A fair credit; a very good credit.
Q. Did you know of Mr. Perez having disposed of any of his property for the purpose of hindering or defrauding his creditors prior to January 4th, 1900?
Ans. No.
Q. Do you know whether or not—or, in your judgment has the bringing of that attachment suit in the provisional court against him attaching his property on a claim of 3200 pesos, had any effect on his credit?
Ans. Just to a certain extent.
Q. Are you able to state to what extent?
Ans. No.
Q. What effect would it have upon his ability to obtain credit since that attachment; would it be more difficult or easier for him to obtain credit after that?
Ans. It would be more difficult.

Cross-examination.

By Mr. CORNWELL:

Q. Upon what do you base your theory?
Ans. I could not tell why but — is a fact.
Q. You cannot tell why but you know it is so?
Ans. Yes.

66 And thereupon further to maintain said issues, the plaintiff introduced as a witness in his behalf one ELISEO FONT Y GILLOT, who, after being duly sworn, testified as follows:

Witness, Dr. FONT, for plaintiff.

(Direct examination.)

By Mr. DEXTER:

Q. What is your occupation?
Ans. I am a collector of internal revenue.
Q. How long have you lived in Mayaguez?
Ans. About eleven years.
Q. Do you know Mr. Perez, the plaintiff in this case?
Ans. Yes.
Q. How long have you known him?
Ans. Eight or nine years.
Q. Did you know his standing and credit as a business man in this community prior to January 4th, 1900?
Ans. I always knew him as a person who enjoyed good personal credit and good personal prestige.
Q. Was this credit and prestige important or very slight?
Ans. It was important because he was a merchant of good standing in the community and on a large scale.

Q. Did you know of the attachment suit brought in the provisional court against Mr. Perez?

Ans. Yes.

Q. What effect has that attachment suit brought against Mr. Perez had on his standing and credit in the community as a business man?

Ans. I understand that any attachment of that kind upon any merchant must injure his credit and diminish it.

Q. Do you know whether or not Mr. Perez prior to January 4th, 1900, had disposed of any of his property with the intention of defrauding his creditors?

The COURT: I do not think he could know the intention of the party.

Q. Do you know whether or not he had disposed of any of his property?

Ans. No.

Q. Do you know what the conduct of Mr. Perez was at the time and before that with reference to paying his obligations?

Ans. I think that he was a merchant that did not have many creditors and that he was always solvent.

Cross-examination.

By Mr. CORNWELL:

Q. Did you know that Mr. Perez had mortgaged some of his property for twenty thousand pesos on the 10th of November, 1899?

Ans. No, sir; I did not know.

Q. As a matter of fact, you know very little about Mr. Perez or his business, do you?

Ans. Yes; I am not a merchant and am not supposed to be in intimacy with the commercial affairs of Mr. Perez. I am a doctor and know him personally and know what I hear.

And thereupon, further to maintain said issues, said plaintiff introduced as a witness in his behalf one IGNACIO GONZALEZ, who after being duly sworn, testified as follows:

67 Witness, IGNACIO GONZALEZ, for plaintiff.

(Direct examination.)

By Mr. DEXTER:

Q. What is your name and where do you live?

Ans. Ignacio Gonzalez; I live in Peral street.

Q. In what city?

Ans. In Mayaguez.

Q. Do you know Mr. Perez, the plaintiff in this case?

Ans. Yes.

Q. Do you know Mr. Fernandez, the defendant?

Ans. Yes.

Q. Have you had any conversation with Mr. Fernandez about his bringing an attachment suit against Mr. Perez?

Mr. CORNWELL: I object to that; it is hearsay.
The COURT: It is calling for what your client said; that is not hearsay. Proceed.

Q. was repeated.
Ans. I have seen the embargo on the house but have never had a word with this gentleman about it.
Q. Did you hear Mr. Fernandez make any statements about bringing any attachment suit against Mr. Perez?

Mr. CORNWELL: That is all hearsay, your honor, and I object to it.
The COURT: That is calling for what the defendant may have said. Proceed with the question.

Q. Did you hear Mr. Fernandez make any statement at any time, in your presence, about his going to bring an attachment suit against Mr. Perez?
Ans. No, sir, but I have seen a paper nailed there to the door of Mr. Perez' house. It was in English but I found out after inquiry that it referred to an attachment.

No cross-examination.

And thereupon further to maintain the said issues, said plaintiff introduced as a witness in his behalf, one LUCAS RAMOS, who after being duly sworn testified as follows:

Witness, LUCAS RAMOS, for plaintiff.

(Direct examination.)

By Mr. DEXTER:

Q. What is your name and where do you live?
Ans. Lucas Ramos; I live in Peral street, Mayaguez.
Q. What is your business?
—. I dedicate myself to the commercial line.
Q. How long have you been in business in Mayaguez?
Ans. Ten years.
Q. Are you the Mr. Ramos, formerly of the house of Perez Ramos y Cia.?
Ans. Yes.
Q. How long have you known Mr. Perez?
Ans. From '86.
Q. What was your association with him during the year 1899 and up to January 4th, 1900? Was it intimate or not?
Ans. We were partners.
Q. Do you know whether he transferred any of his properties so as to place them beyond the reach of any of his creditors during that time?
Ans. No, sir.
68 Q. Was Mr. Perez able to pay his debts during that time, do you know?

Ans. Yes; he had several properties and then he had the interest in the house.

Q. Do you know, approximately, what Mr. Perez was worth on January 4th, 1900?

Ans. No, I cannot tell that.

Q. Can't you approximate it?

Ans. No, sir.

Q. Was he good for a debt of 3200 pesos at that time?

Ans. Yes.

Q. So far as you know, and during your association with him had he failed in the payment of his debts during that time?

Ans. No, sir.

Q. Do you know that there was an attachment against the property of Mr. Perez, issued by the provisional court in January, 1900?

Ans. Upon his goods, no; upon his property, a house of his.

Q. Is that the house where the firm was doing business?

Ans. Yes.

Q. Do you know whether or not that attachment has affected the credit of Mr. Perez, and his standing as a business man in this community?

Ans. I cannot say exactly.

Q. You mean to say that you do not know that it has or it has not; you do not know one way or the other?

Ans. I do not know; I cannot say.

Cross-examination.

By Mr. CORNWELL:

Q. Mr. Ramos, please state to the court and the jury if that attachment against Mr. Perez, affaected the credit of the firm of Perez Ramos y Cia.?

The COURT: I do not think that is a proper question. It is not a question of whether the credit of the house was affected, but whether this plaintiff's credit was affected.

And thereupon, further to maintain said issues said plaintiff introduced as a witness in his behalf one JACINTO PEREZ, who, after being duly sworn, testified as follows:

Witness, JACINTO PEREZ, for plaintiff.

(Direct examination.)

By Mr. DEXTER:

Q. What is your name and where do you live?

Ans. Jacinto Perez; I live in Las Marias.

Q. Are you the Jacinto Perez that acquired some land as the heir of Claudio Barros?

Mr. CORNWELL: I object as that is entirely immaterial.

The COURT: It is simply by way of identifying him. Proceed and ask the question.

Q. was repeated.

Ans. Yes, sir.

Q. State whether or not, if you know of your own knowledge, whether or not you or any of the heirs of Claudio Barros authorized Mr. Fernandez to institute any attachment suit against Mr. Perez?

Mr. CORNWELL: I object to that as Mr. Fernandez never instituted any attachment proceeding in the court; it was in the name of somebody else.

The COURT: I do not think that question is proper. Suit was brought in the name of Aguerria, executor, and the court ruled that a foreign executor, without first complying with certain conditions could not sue here.

69 Mr. DEXTER: We want to show that the defendant here never had any authority from anybody to institute such a proceeding.

The COURT: I do not think the question is competent.

Q. Who represented the estate of Claudio Barros?

Mr. CORNWELL: That is immaterial and I object to it.

The COURT: He can ask that question.

Q. Who represented the estate of Claudio Barros?

Ans. I know that Mr. Fernandez sued Mr. Perez for a sum he owed my dead uncle.

Mr. CORNWELL: I ask to have that answer stricken out as it is not responsive to the question.

The COURT: I do not think that is in answer to the question. The suit shows how it was brought.

Mr. DEXTER: I propose to show by this witness that the proper parties, the heirs, the three heirs of Claudio Barros, that none of these people authorized this defendant here to institute such an attachment proceeding.

The COURT: The record shows that this man was an executor in Spain; that is my recollection; that he was in Spain, an executor, and that this suit was brought in his name. I take it that if the man believed in good faith—the defendant here—and did not act maliciously, assuming that he did not, and did not act maliciously, and for proper cause brought the suit in the name of the executor who was in Spain, and believed he had a right to bring it, it seems to me that is not malicious persecution.

Mr. DEXTER: I propose to show in this case that this defendant had no such authority as that; that he knew from a knowledge of the facts that he had no power to bring such a suit, and that he did not represent the sucesion.

The COURT: I will let you prove by this witness if he knows that he did not represent the executor and had no power to act.

Plaintiff excepts.

Q. Do you know whether or not Mr. Fernandez represented the executor of the estate of Claudio Barros?

The COURT: Do not put it "estate." Does he know of his own knowledge whether he represented the executor?

Q. Do you know, of your own knowledge, whether Mr. Fernandez here legally represented the executor?

The COURT: I will not leave this witness to judge of the legality of the representation. Ask him whether the defendant here represented the executor.

Q. Do you know of your own knowledge, whether the defendant in this case, Mr. Fernandez, represented the executor of Claudio Barros?

Ans. According to what Mr. Fernandez told me, he had received a power from Mr. Aguerria, who was the executor of Claudio Barros.

Q. Do you know whether or not any of the heirs had given him any such power or authority?

The COURT: I rule that out; it is not competent. Proceed.

Mr. DEXTER: That is all.

Mr. CORNWELL: No cross-examination.

Court adjourned at 6.20 p. m. until 9 o'clock next morning.

Court met again at 9.15 December 12th, 1901.

70 Mr. DEXTER: I would like to state, your honor, that one of the plaintiff's witness, Lucas Ramos, wishes to be put upon the stand again as yesterday he misunderstood a question asked him and he answered it wrongly.

The COURT: Bring him in.

The witness LUCAS RAMOS, thereupon being recalled, resumes the witness stand and testifies as follows:

By Mr. DEXTER:

Q. Mr. Ramos, yesterday afternoon the following was asked you: Do you know whether or not that attachment has affected the credit of Mr. Perez and his standing as a business man in this community?—to which your answer was: "I cannot say exactly" Is that correct or not?

Ans. I understood that the question referred to the house of Perez Ramos & Company.

Q. What is the character of the answer you desire to make to that question?

Ans. If it refers to the private affairs of Mr. Perez I consider that it may have caused him damages.

Q. Do you know to what extent if any?

Mr. CORNWELL: I object. He was going to ask him but one question and now he is going into another examination. Besides the question is leading and suggestive.

The COURT: The witness is correcting another answer that he

made because he misunderstood the question, and that necessarily leads to another question. I will permit him to answer.

Q. Do you know to what extent, in what way?

Ans. To what sum?

Q. No, no, just in what respect did it hurt the credit or standing of Mr. Perez as a business man?

Ans. I consider that he must have suffered because when a man has his property attached, necessarily he suffers in his credit. I cannot state the amount of the harm done.

Q. State whether or not it was, in your judgment, an important amount or a very small or slight amount?

The COURT: I will overrule that question.

Mr. DEXTER: Then that is all.

Mr. Dexter, for plaintiff, announces that plaintiff rests his case. And this was all the evidence given on behalf of the plaintiff in said cause.

Mr. CORNWELL: On behalf of the defendant we move for a non-suit in this case on the ground that the plaintiff has made no case; has proved no probable cause and no malice.

(The court ordered the jury to retire during the argument for non-suit)

Mr. Cornwell and Mr. Horton argue the motion for non-suit at length, citing Stewart-ex.-Sonnebonne, 8th Otto, S. C. 187-202.

The COURT: I over-rule the motion. I do not care to hear from you Mr. Dexter. The motion is over-ruled. Bring in the jury and let us proceed.

71 Mr. CORNWELL: I ask the court to now permit me to take an exception to the ruling of the court.

The COURT: Enter an exception, Mr. Stenographer.

The defendant thereupon offered certain testimony to maintain the issues on his behalf, but as no error is assigned in regard thereto, the same is not set forth in this bill of exceptions.

And the said parties having concluded and submitted their testimony on the several matters aforesaid, the said judge, before the jury retired to consider of their verdict did then and there of his own motion charge and instruct the jury as follows:

GENTLEMEN OF THE JURY: You have listened, as was your duty, carefully to the investigation of this case, and to the attorneys who have argued it, and the end of it is now approaching. You are to determine it finally upon the facts of the case and the law as given you in charge by the court. There are one or more bystanders on this jury and therefore the court feels compelled to repeat what it has already said several times to some of you, and that is, that the court determines the law of the case; whatever the court says to you is the law of the case that you must accept. It is your province, however, to determine what are the facts in the case—what has been proven by the testimony here. While the province of the court is absolute in determining the law, your province is equally absolute in determining the truth of what has been offered in evidence before

you. In other words, your province is confined to what are the facts of the case from the testimony. You have sworn, gentlemen, that you will try it according to the testimony in the case. Of course, that means that you are not going to be governed by any sympathy, or by any partiality you may have in any outside transaction; and that you are not to be governed by what the attorneys in the case say, either, as to the law or the facts of the case. However learned the attorneys may be, what they say to you is not conclusive, either as to the law or the facts. The object of attorneys arguing a case is that they may detail to you, for you to judge, their recollection of the testimony. They state what they think is the law of the case, and that is to be controlled by the charge of the court to the jury. So you are the judges of the facts of the case—the testimony offered—although this or that attorney may say that this is the evidence or that is the evidence. You are the judges of that and must determine whether the attorneys detail it correctly or not. It is only for the purpose of refreshing your recollection as to the facts that the arguments are allowed, and the views of the different parties are presented to you.

This is an action styled in the law books an "action upon the case." Stated in a different way, it is an action for a malicious prosecution, for the malicious suing out of an attachment—that is, that it was done without proper cause and with malice. It does not really matter whether there was any cause for it, or not—any real cause. The question is whether there was *probable* cause for it, and whether it was done through malice. Now, I need not say to you gentlemen, as to probable cause, what the meaning of that is. The law books have defined that and they say this about it: "The probable cause is the existence of such facts or circumstances as will create the belief in a reasonable mind that the grounds are correct." You understand, without my saying anything further, what is the meaning of "probable cause." It is whether a reasonable
72 being, a man of ordinary faculties, would have acted under certain circumstances in that way. If he would, then the probable cause, existed.

Now, whether malice existed, or not, is a second question in the case. In other words, if there was no probable cause, for the man doing anything, why, you attribute what he did to malice. That is only a presumption of law, however, and is liable to be rebutted by the testimony in the case. It is justly presumed it was done through malice if there was no probable cause. There are a great many of these rules of law that might seem to you, at first blush, that there was no reason in them, but when we look at it and consider them carefully, as a scholar in law has occasion to do, there is reason in all of them. For instance, a rail-road company transports goods, and it transports the owner of the goods. While it is bound to use all reasonable care with the owner—the man—yet it does not have to have the same care with the man as it does with the goods. That looks very singular at first. The railroad is an insurer for the goods but not for the man. You say that the life of a man is worth a great deal more than a box of candy. That is true—a great deal more

than the box of candy—but the box has no mind, no intelligence, and cannot take — of itself, and hence the carrier is bound to take care of it. The owner has some judgment, some intelligence, and hence the law does not make the carrier the insurer of a man, coming, for instance, from Aguadilla.

Where a man sued out an attachment without probable cause, why, judging from the ordinary transaction in life, the law, in its wisdom, says that it is to be presumed—if there is no probable cause—that it was done with malice, for why else should a person sue out an attachment, if there was no probable cause, except through malice?

I say to you it is the law that wherever there was no probable cause—and I use the word "*probable*" and not "*actual*" cause—that is not required—where there is no probable cause for the attachment, the law presumes malice. If, however, gentlemen—and I am laying down some general rules to guide you in this matter—if, however, probable cause did exist for suing out the attachment, it matters not whether there is really malice. For instance, if I have a debt against one of you gentlemen and you are making away with your property fraudulently, although I do not like you, yet, I can sue out an attachment, and it does not matter what malice I may have had when I did it. Where there is no probable cause for suing out an attachment malice is presumed—liable, however, to be rebutted by the circumstances and testimony in the case.

In this instance, the defendant here, Fernandez, as the agent of another party living, I believe, in Spain, sued out an attachment, as he had the right to do under the law, I say that on January 2nd 1900 he, as the agent of another party sued out—and acting for the other party—sued out an attachment against the property of the plaintiff in this suit, Mr. Perez. That attachment was based on this statement that has been offered in evidence (reading from the affidavit filed) "AFFIANT HAS REASON TO BELIEVE THAT THE DEFENDANT INTENDS TO AND WILL FRAUDULENTLY PART WITH OR CONCEAL HIS PROPERTY BEFORE A JUDGMENT CAN BE RECOVERED AGAINST HIM." You will notice that the statement is "he has reason to believe that, etc." I say to you, gentlemen, that if, at the time that the attachment was sued out, on the 2nd day of January 1900, this defendant in this case, Fernandez, had reasonable grounds to believe, from all the circumstances existing, and that have been proven to you, that there was reasonable cause to believe that this Spanish gentleman for whom he was acting would lose his debt unless he took such steps as he did take, and he had the right to take under the law, then he is protected in this suit, and your verdict in that event would be for the defendant.

If, upon the other hand, if you believe that he did not act in
73 good faith; that it was in bad faith—judging from all the testimony and all the circumstances—that there — no grounds for a reasonable man to believe that that debt might be lost unless some action was taken, then I say to you that this defendant had no right to sue out that attachment, and, although he was only acting for another as agent, it is a tort and a wrong for which he is responsible,

as well as the man he acted for. If there is no reasonable cause to believe he had grounds for an attachment, the law presumes he did it maliciously. That view, however, is liable to be rebutted by all the circumstances and evidence in the case, and you must determine whether—not that there was actual cause for suing it out—but whether, under all the circumstances, he had reasonable grounds to think, as a reasonable prudent man, that there were grounds for suing it out, You are to also determine from the evidence whether that presumption of malice is rebutted by the circumstances in the case. The law creating and keeping in existence the provisional court provided that attachments may be sued out of it upon the grounds that I have read to you and upon which the defendant did sue it out. It is really at last a matter for you to determine under, all the testimony, whether it was done in good faith—whether it was done honestly—and not whether the facts actually existed that authorized the suing out of the attachment, but whether there were reasonable grounds on the part of this defendant to believe that there were grounds for suing it out.

I am not going to detail the testimony to you. Upon one side, this plaintiff in this action had lived here for some fifteen years. He had built up a reputation here for good credit. I say to you, if you believe from all the testimony that this attachment was sued out against him without probable cause, and there was malice on the part of Mr. Fernandez in suing it out, then that the plaintiff is entitled to recover whatever damages he has suffered by reason of it. He should recover in such a case: it is right that he should. A man does not build up a reputation in a day or two for credit. He may have an immense amount of money—and an immense estate—and that may give him some credit, but if he does not pay his debts he will not have much credit in the commercial world. It is like building a building—putting one brick upon another until at last you have a good structure. That is worth something to a man—his credit. If he is injured in it without probable cause he is entitled to damages for it—entitled to be made whole. If you believe that this plaintiff had this credit in this community, and that the defendant, without probable cause and with malice sued out this attachment, you should find for the plaintiff whatever you believe from the evidence he has been damaged. In doing that you will consider any injury resulting entirely from the attachment. You will embrace in it loss of time, expenses, either for lawyers or in travelling, or other expenses; and injury to his property or his credit and loss of his business.

Upon the other hand—and I am not going to detail the testimony in this case—the testimony tends to show—and this is subject to your correction,—mind you, this detail of the evidence and you must not hesitate a moment to correct me in any matter and at any time if I fail to detail it correctly, as I do it merely to refresh your memory—I say to you then, gentlemen, that the testimony in this case tends to show that this defendant was acting as agent for a gentleman in Spain, and that he had a debt to collect against Mr. Perez, and the testimony tends to show that he kept that debt on Mr. Perez

for a month trying to make a settlement with him and get security for the debt; that that was not accomplished; finally, on, I believe, November 10th, 1899, or, at any rate some time before and prior to the bringing of this attachment suit--just before the time—he found out that a mortgage had been executed on November 10th
74 1899, by the plaintiff in this suit upon, at least, a part of his property. You have heard it read and you can judge of the testimony. And that he executed the mortgage, which was unregistered. He then very properly, I think, and we all agree, went to a lawyer to know what to do. He detailed to the lawyer the circumstances existing—told him—as the testimony tends to show—about this mortgage; told him of the debt he had; that he was the agent for the other man, and asked him what he should do. The lawyer gave him his opinion. Now, gentlemen, I am not going to tell you that that consultation with the lawyer, and being advised to do that, is an absolute bar to this case, but I am going to say to you that you are to consider all that upon the question as to whether this man acted upon probable cause, without malice, or with malice. The attorney advised him to sue out this attachment and he did so, and the property was levied on. At last, therefore, gentlemen, after having reviewed all this testimony the question is presented to you whether this defendant, Fernandez, acted in good faith, and whether he had ground for the belief, as a reasonable man, that he had cause for suing out this attachment, or, whether he acted in malice and in bad faith. You are to determine simply that question. If you determine that he had no probable cause for suing out this attachment—that it was done through malice, why, then, you ought to find for the plaintiff whatever he has been damaged by reason of it. The sole question is as to the attachment. Allusion has been made to the fact that the court determined that that suit did not lie. That has nothing to do with this case. It is true the plaintiff in this suit could not sue until that other suit was determined, but that suit was determined upon another legal question, and with that you have nothing to do. The question in this case is whether or not this defendant had reasonable cause to believe at the time he sued out the attachment that there was danger the debt would be lost unless he sued out the attachment, or if, he acted with malice. If you believe that he acted as a prudent man and in good faith, believing that he had cause to sue out that attachment, you should find for the defendant. In determining this question you take into consideration all the testimony that has been allowed to be offered before you.

(To the attorneys:)

Gentlemen: I think I have given substantially what each of you has asked.

Mr. DEXTER: In the charge to the jury, your honor, has used the following language: "If Fernandez sued out the attachment as he had the right to do under the law." I ask that the court qualify that by stating "subject to the balance of the charge I have given."

The COURT: Certainly, gentlemen, I mean by that to say that the law simply gave him the right to sue out an attachment if the con

ditions and circumstances existing authorized him to do it. Of course, that is to be qualified by the balance of the charge.

The plaintiff in this case, gentlemen of the jury must—and I will not use language that is sometimes used in cases—but it lies upon the plaintiff to prove his case—not to the exclusion of a reasonable doubt, as in criminal cases, but to prove it reasonably, that is to your belief—to your belief. You will find a verdict in this kind of a case in accordance with the preponderence of the testimony.

75 Gentlemen, that is all I desire to say to you in the case. If you find a verdict for the plaintiff you will say: "We, the jury, find for the plaintiff, and assess damages—so much, whatever it may be," and if you find for the defendant you will say "We, the jury, find for the defendant.

The jury thereupon retired at 2 o'clock and returned at 3.35 and rendered the following verdict:

"We the jury, find for the plaintiff $7000.00 in damages."
(Signed) J. J. GIMENEZ, *Foreman.*

Mayaguez, December 12, 1901."

And inasmuch as the several matters objected to or insisted upon and considered by the court do not appear by the record, the said defendants did on the 5th day of February, A. D. 1902, after the expiration of said term, which adjourned December 12th A. D. 1901, by virtue of a special order and subsequent stipulation between the attorneys of the respective parties made herein extending the time for the filing of the same, proposed this bill of exceptions to the rulings of the said judge, and request him to sign the same as provided by the statutes in such cases made and provided, which after notice to plaintiff's attorney, is signed this 5th day of February, A. D. 1902.

(Signed) WM. H. HOLT,
[SEAL.] *United States District Judge for the District of Porto Rico.*

Endorsement: No. 70. C. L. Mayaguez. In the district court of the United States for Porto Rico. December term, 1901. Jose Perez y Fernandez *vs.* Jose Antonio Fernandez y Perez and Rafael Diaz Aguerria. Bill of exceptions. Filed clerk's office United States district court February 5th 1902 (Signed) Ricardo Nadal, clerk of the court.

76 And afterwards, to wit, on the 11th day of February, 1902, came the defendant in this suit by his attorneys and filed in the clerk's office of the court aforesaid his certain appeal bond in this case, which said appeal bond is clothed in the words and figures following, to wit:

In the United States District Court for Porto Rico.

JOSE PEREZ Y FERNANDEZ
vs.
JOSE ANTONIO FERNANDEZ Y PEREZ and RAFAEL DIAZ AGUERRIA.

Appeal Bond.

Know all men by these presents that we Jose Antonio Fernandez y Perez as principal, and Francisco Crestar and Damian Fernandez as sureties, are held and firmly bound unto Jose Perez y Fernandez, plaintiff above named in the sum of ten thousand dollars ($10000.00) to be paid to the said José Perez y Fernandez, his executors or administrators, to which payment well and truly to be made, we, bind ourselves and each of us jointly and severally, and our and each of our successors, representatives, and assigns, firmly by these presents.

Sealed with our seals and dated this 27th day of January, A. D., 1902.

Whereas, the above named defendant Jose Antonio Fernandez y Perez has sued out a writ of error to the United States Supreme Court to reverse the judgment in the above entitled cause by the district court of the United States for the district of Porto Rico,

Now therefore, the condition of this obligation is such that if the above named Jose Antonio Fernandez y Perez shall prosecute said writ to effect and answer all costs and damages, if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

(Signed) JOSE A. FERNANDEZ. [SEAL.]
FRANCO. CRESTAR. [SEAL.]
DAMIAN FERNANDEZ. [SEAL.]

CITY OF MAYAGUEZ, *Island of Porto Rico,* } *ss.:*

Francisco Crestar and Damian Fernandez of Mayaguez, Porto Rico, the sureties named in and who signed the foregoing bond, being duly and severally sworn, each for himself deposes and says: That he is worth in unencumbered property not exempt from execution, under the laws of Porto Rico, the sum of ten thousand dollars, after the payment of all just debts, claims and liabilities.

(Signed) FRANCO. CRESTAR.
DAMIAN FERNANDEZ.

Subscribed and sworn to before me this 27th day of January, A. D. 1902.

(Signed) J. A. ERWIN,
[SEAL.] *Ass. Judge of District Court of Mayaguez, P. R.*

(Indorsement:) Jose Perez y Fernandez *vs.* Jose Antonio Fernandez y Perez, and Rafael Diaz Aguerria. Bond. Filed clerk's office United States district court February 11, 1902. (Signed) Ricardo Nadal, clerk of the court.

77 And afterwards, to wit, on the last day aforesaid came the defendant in this case and filed in the clerk's office of the court aforesaid his certain petition for writ of error and supersedeas, which said petition is clothed in the words and figures following, to wit:

In the United States District Court for the District of Porto Rico.

JOSE PEREZ Y FERNANDEZ
vs.
JOSE ANTONIO FERNANDEZ Y PEREZ and RAFAEL DIAZ AGUERRIZ.

Petition for Writ of Error and Supersedeas.

Jose Antonio Fernandez y Perez, a defendant in the above entitled cause feeling himself aggrieved by the verdict of the jury and the judgment entered on the 12th day of December, 1901, comes now by his attorneys, Horton and Cornwell, and petitions this court for an order allowing said defendant to prosecute a writ of error to the United States Supreme Court, under and according to the laws in that behalf made and provided, and that upon the defendant's giving a bond in the sum of ten thousand dollars in accordance with the order of this honorable court made he-ein on the 13th day of January, 1902, all further proceedings in this court be suspended and stayed until the termination of said writ of error by the United States Supreme Court.

And your petitioners will ever pray.

(Signed) HORTON & CORNWELL,
Attorneys for Defendant Jose Antonio Fernandez.

Indorsed: Filed clerk's office United States district court, February 11th, 1902. Ricardo Nadal, clerk of court By H. H. Scoville, D. C.

And afterwards, to wit on the same day last aforesaid came the plaintiff in this case by his attorneys and filed his certain motion in the clerk's office of the court aforesaid, which said motion is clothed in the words and figures following, to wit:

In the District Court of the United States for Porto Rico.

JOSÉ PEREZ Y FERNANDEZ
vs.
JOSÉ ANTONIO FERNANDEZ Y PEREZ.

Motion to Require Appellant to Furnish Other and Better Security.

Now comes plaintiff and his assignee José Gonzalez and moves the court to require defendant to give other and better sureties for the appeal bond herein for the reason that Francisco Crestar and Damian Fernandez have not any visible property or estate and have

not sufficient in amount of any goods or property equal to the amount of the said bond for appeal and supersedeas.

(Signed) JOSÉ B. GONZALEZ.
JOSÉ PEREZ.

José Perez being duly sworn, upon his oath says that the facts set forth are true.

(Signed) JOSÉ PEREZ.

Subscribed and sworn to before me this 10th day of February 1902.

(Signed) RICARDO NADAL, *Clerk.*

(Indorsed:) Filed clerk's office U. S. district court Feb'y 11 1902.

78 And afterwards, to wit, on the last day aforesaid an order was entered on the chancery order book of said court in said cause which said order is clothed in the words and figures following, to wit:

In the District Court of th- United States for Porto Rico.

FEBRUARY 11, 1902.

Present: The Honorable Wm. H. Holt, judge.

JOSE PEREZ Y FERNANDEZ
vs.
JOSE ANTONIO FERNANDEZ Y PEREZ ET AL.

The defendant filed his petition for a writ of error herein to the Supreme Court of the United States and the same is allowed. And he thereupon presented and appeal bond dated January 27th, 1902, and moves its acceptance and approval, to which the plaintiff objected and filed his objection and time is given till February 24th, 1902, for the filing of affidavits relative to the sufficiency of said bond, or within which time the defendant may file a new bond if he so desires.

The defendant files his assignment of errors.

And afterwards, to wit, on the same day last aforesaid, came the plaintiff in error, by his attorneys and filed in the clerk's office of the aforesaid court his certain assignment of errors, in said cause, which said assignment of errors is clothed in the words and figures following, to wit:

In the District Court of the United States for Porto Rico.

JOSÉ PEREZ Y FERNANDEZ, Plaintiff,
versus
JOSÉ ANTONIO FERNANDEZ Y PEREZ & RAFAEL DIAZ AGUERRIA, Defendants.

Assignment of Errors.

Now comes the plaintiff in error, José Antonio Fernandez y Perez, one of the defendants in the above entitled action, and files the following assignment of errors:

I. That the United States district court in and for the district of Porto Rico erred in overruling the demurrer interposed by this defendant, and plaintiff in error, to plaintiff's declaration filed in said cause.

II. That said court erred in denying the motion for a nonsuit made by this defendant after plaintiff had introduced all his evidence in chief, and before the offering of any testimony on behalf of the defendants, the grounds being specified in said motion.

III. The court erred in rendering a judgment against this defendant alone, he being one of the defendants sued jointly, and no dismissal or nonsuit having been asked for or entered as to the other defendant.

(Signed) HORTON & CORNWELL,
Attorneys for Plaintiff in Error.

Endorsement: In the district court of the United States for Porto Rico. José Perez y Fernandez, pl'ff. *vs.* José Antonio Fernandez y Perez Rafael Diaz Aguerria, def'ts. Assignment of errors. Filed, clerk's office United States district cour- Feb'y 11th, 1902 (Signed) Ricardo Nadal clerk of court.

79 And afterwards, to wit, on the twenty fourth day of February, A. D., 1902, came the defendant herein by his attorneys, and filed with the clerk of the aforesaid court in said cause, his certain bond on writ of error, which said bond is clothed in the words and figures following, to wit:

In the District Court of the United States for the District of Porto Rico.

JOSÉ PEREZ Y FERNANDEZ, Plaintiff,
vs.
JOSÉ ANTONIO FERNANDEZ Y PEREZ, RAFAEL DIAZ AGUERRIA, Defendants.

Bond on Writ of Error.

Know all men by these presents that we José Antonio Fernandez y Perez, as principal, and Francisco Crestar and Mariano Riera Palmer as sureties, are held and firmly bound unto José Perez y

Fernandez, plaintiff above named in the sum of ten thousand dollars ($10,000.00) to be paid to the said José Perez y Fernandez, his executors or administrators, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our successors, representatives and assigns firmly by these presents.

Sealed with our seals and dated this 20th day of February, A. D., 1902.

Whereas, the above named defendant José Antonio Fernandez y Perez has sued out a writ of error to the United States Supreme Court to revere the judgment in the above entitled cause by the district court of the United States for the district of Porto Rico.

Now, therefore, the condition of this obligation is such that if the above named José Antonio Fernandez y Perez shall prosecute said writ to effect and answer all costs and damages, if he shall fail to make good his plea, then this obligation shall be void: otherwise, to remain in full force and virtue.

(Signed) JOSÉ A. FERNANDEZ. [SEAL.]
FRANCISCO CRESTAR. [SEAL.]
MARIANO RIERA PALMER. [SEAL.]

CITY OF MAYAGUEZ, *Island of Porto Rico,* } *ss:*

On this 21st day of February, 1902, before me personally came José Antonio Fernandez y Perez, Francisco Crestar and Mariano Riera Palmer to me personally — to be the same persons who executed the above bond and duly acknowledged the execution of the same.

(Signed) FRANCISCO B. BASORA,
[SEAL.] *U. S. Commissioner.*

(Indorsements:) Jose Perez y Fernandez *vs.* Jose A. Fernandez y Perez and Rafael Diaz Aguerria. Filed clerk's office United States district court February 24, 1902. Ricardo Nadal, clerk of the court, by H. H. Scoville, D. C.

80 And afterwards, to wit, on the same day last aforesaid came the defendant by his attorney herei and filed in the clerk's office of the aforesaid court in said cause his certain certificate, which said certificate is clothed in the words and figures following, to wit,

Hon. Sr. Alcalde Municipal de esta ciudad:

El que subscribe vecino propietario de esta ciudad, ante Ud. respetuosamente expone; que para usos que le interesan necesita que por esa Alcaldia se le expida certificacion creditiva de las fincas con su número de cuerdas que en el año 1900 á 1901 figura Don Marian Riera Palmer en los barrios de Miradero, Algarroba y Sabanetas.

Mayaguez 20 de Febrero 1902.

Respetiosamente

(Signed) JOSÉ A. FERNANDEZ.

Mayaguez 20 de Febrero 1902.—Expídase la certificacion que se interesa por Secretaría.

[SEAL.] (Signed) M. FAJARDO, *Alcalde.*

Don Ramon Irizarry Ursulich, Secretario del Honorable Ayuntamiento de la Ciudada de Mayaguez Certifico:

Que Don Mariano Riera Palmer figura como contribuyente en el reparto municipal de 1900 á 1901, con las siguientes fincas.

Barrio de Algarrobo Setenta cuerdas y tres cuarta.

Id. de Miradero Treinta y nueve cuerdas.

Id. de Sabanetas cuarenta y tres cuerdas y cuarta.

Y para entregar al solicitante expido la presente que firmo con el V. B. del Señor Alcalde, en Mayaguez á 20 de Febrero de 1902.

(Signed) RAMON IRIZARRI.

[SEAL.]

V. B.

M. FAJARDO, *Alcalde.*

Pago el impuesto un dollar.

[Municipal Treasurer's Seal.]

(Signed) SALUSTIANO COLLADO.

Indorsed: C. L. 70. Mayaguez. Perez *vs.* Fernandez. Certificate of alcalde of Mayaguez. Filed clerk's office United States district court February 21, 1902. Ricardo Nadal, clerk of court by H. H. Scoville D. C.

And afterwards, to wit, on the same day last aforesaid, an order was entered upon the chancery order book of the court aforesaid in said cause, which said order is clothed in the words and figures following, to wit:

In the District Court of the United States for Porto Rico.

FEBRUARY 24TH, 1902.

Present: The Hon. Wm. H. Holt, judge.

81 JOSÉ PEREZ Y FERNANDEZ *vs.* JOSÉ ANTONIO FERNANDEZ Y PEREZ. } C. L. #70.

Order.

The defendant presented a new bond herein and moved the approval and acceptance of same, it being accompanied by a notarial certificate and a certificate of the officers of the *officers of the* municipality of Mayaguez. And the court not being advised sufficiently and thinking it proper the other side should have opportunity of objecting if it desire, the further hearing of the matter is adjourned

till February 25, 1902, at 10 o'clock a. m., said bond and papers being filed.

(Signed) WM. H. HOLT, *Judge.*

And afterwards, to wit, on the twenty fifth day of February, A. D., 1902, an order was entered on the chancery order book of the court aforesaid in said cause, which said order is clothed in the words and figures following, to wit:

In the District Court of the United States for Porto Rico.

FEBRUARY 25, 1902.

Present: The Honorable Wm. H. Holt, judge.

JOSÉ PEREZ Y FERNANDEZ
vs.
JOSÉ ANTONIO FERNANDEZ Y PEREZ.

Order.

The defendant by his attorneys, Horton and Cornwell, renew-d his motion for approval of bond tendered herein, to which the plaintiff's assignee, J. B. Gonzalez, by his attorney, F. H. Dexter, objects and by consent the further hearing of the matter as to the sufficiency of the bond is set for hearing March 5th, 1902, at 10 o'clock a. m.

The plaintiff also enters a motion for an order vacating the supersedeas sought to be obtained herein and for the granting of an execution and same is set for March 5, 1902, at 10 a. m., and said motion in writing is now filed.

(Signed) WM. H. HOLT, *Judge.*

And afterwards, to wit, on the same last day aforesaid, came the plaintiff, by his assignee and attorney herein, and filed in the clerk's office of the court aforesaid in this cause, his certain motion for execution, which said motion is clothed in the words and figures following, to wit:

In the District Court of the United States for Porto Rico.

JOSÉ PEREZ Y FERNANDEZ
vs.
JOSÉ ANTONIO FERNANDEZ Y PEREZ.

Motion for Execution.

Now comes José Perez y Fernandez, by and through José B. Gonzalez, the assignee of the judgment herein, and moves the court for an order vacating the supersedeas sought to be obtained herein, and the granting of an execution for the following reasons, to wit:

1st. Because no writ of error has been sued out, signed or sealed as required by law, and within the time specified by statute in such cases made and provided.

2nd. Because a writ of error has not been served upon
82 plaintiff or his assignee, by lodging a copy thereof in the clerk's office where the record remains, within sixty days, Sundays exclusive, after the rendering of the judgment complained.

3rd. Because security has not been given as required by law.

4th. Because no citation has been issued and served as required by law and practice in such cases.

5th. Because the writ of error and the proceedings therefor have not been perfected within the time necessary in order to secure a supersedeas of the judgment herein entered.

(Signed) F. H. DEXTER,
Attorney for Plaintiff's Assignee.

Endorsement: José Perez y Fernandez *vs.* José A. Fernandez y Perez. Motion for execution. Filed clerk's office United States district court February 25, 1902. (Signed) Ricardo Nadal clerk of court H. H. Scoville, D. C.

And afterwards, *to wit*, on the fifth day of March, 1902, came the defendant, José Antonio Fernandez y Perez, by his attorneys herein, Horton and Cornwell, and filed in the clerk's office of the court aforesaid, his certain affidavit of sureties, in the said cause, which said affidavit is clothed in the words and figures following, to wit:

In the District Court of the United States for Porto Rico.

JOSÉ PEREZ Y FERNANDEZ, Plaintiff,
vs.
JOSÉ ANTONIO FERNANDEZ Y PEREZ and RAFAEL DIAZ AGUERRIA, Defendants.

Affidavit of Sureties.

CITY OF MAYAGUEZ, } ss:
District of Porto Rico, }

Francisco Crestar, and Mariano Riera Palmer, residents of Mayaguez Porto Rico, the sureties named in and who signed the supersedeas bond in the above entitled case, being duly and severally sworn, each for himself deposes and says: That he is worth in property not exempt from execution under the laws of Porto Rico, in excess of the sum of ten thousand dollars, after the payment of all just debts, claims and liabilities.

(Signed) FRANCO. CRESTAR.
MARIANO RIERA PALMER.

Subscribed and sworn to before me, this first day of March 1902, in the city of Mayaguez, Porto Rico.

[SEAL.] (Signed) FRANCO. B. BASORA.

83 (Indorsement:) C. L. No. 70. José Perez y Fernandez *vs.* José Antonio Fernandez y Perez and Rafael Diaz Aguearia Affidavit of sureties. Filed clerk's office United States district court (Signed) Ricardo Nadal clerk of the court.

And afterwards, to wit, on the same day last aforesaid there was issued out of the clerk's office of said court a certain writ of error directed to the judge of the United States district court for the district of Porto Rico which said writ of error, is clothed in the words and figures following, to wit:

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable judge of the district court of the United States for Porto Rico, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment which is in the said United States district court before you between José Antonio Fernandez y Perez, plaintiff in error and José Perez y Fernandez, defendant in error, *and* manifest error hath happened to the great damage of the said José Antonio Fernandez y Perez, as by his complaint appears. *That* being willing that error, if any hath been, be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then and there under your seal, distinctly and openly, you send the records and proceedings aforesaid, and all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the 5th day of April 1902, next, — the said Supreme Court to be then and there held, that the record and proceedings aforesaid be inspected, *and* the said court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable Melville W. Fuller Chief Justice of the Supreme Court of the United States this 5th day of March, A. D., one thousand nine hundred and two.

[SEAL.] (Signed) RICARDO NADAL,
Clerk United States District Court for District of Porto Rico.

Allowed March 5, 1902, by:
(Signed) WM. H. HOLT,
District Judge.

Service of this writ of error and receipt of copy thereof is hereby admitted this 5th day of March 1902.

———,
Attorney for Defendant in Error.

84 (Indorsement:) José A. Fernandez y Perez, plaintiff in error *vs.* José Perez y Fernandez, defendant in error. Writ of error. Filed clerk's office United States district court March 5th 1902. Ricardo Nadal, clerk of the court.

And afterwards, to wit, on the same day last aforesaid came the marshal of this district and returned the aforesaid writ of error into the clerk's office of said court, with his proceedings thereon in the words and figures following, to wit:

Return on Service of Writ.

UNITED STATES OF AMERICA, } ss:
District of Porto Rico, }

I hereby certify and return that I have served the annexed writ on the therein named José Perez y Fernandez by handing to and leaving a true and correct copy thereof with F. H. Dexter attorney for defendant in error personally at San Juan in said district on the 5th day of March, A. D. 1902.

(Signed) E. S. WILSON,
U. S. Marshal.

And afterwards, to wit, on the same day last aforesaid there was issued from this United States district *district* court for Porto Rico aforesaid a certain writ of citation directed to José Perez y Fernandez, which said citation is in the words and figures following, to wit:

UNITED STATES OF AMERICA, ss:

The President of the United States of America to José Perez y Fernandez:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be held at the city of Washington District of Columbia, within thirty days from the date of this writ, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the district of Porto Rico wherein José Antonio Fernandez y Perez is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 5th day of March A. D., 1902, and of the Independence of the United States the one hundred and twenty sixth year.

(Signed) WM. H. HOLT,
[SEAL.] *United States District Judge.*

Attest:
(Signed) RICARDO NADAL, *Clerk.*

(Indorsement:) José Antonio Fernandez y Perez, plaintiff in error vs. José Perez y Fernandez, defendant in error. Citation. Filed clerk's office United States district court. March 5th 1902. (Signed) Ricardo Nadal, clerk of the court.

Marshal's fees 1 service $2.00

And afterwards, to wit, on the same day last aforesaid came the marshal of this district and returned the said writ of citation into the clerk's office of said court, with his proceedings thereon in the words and figures following, to wit:

Return on Service of Writ.

UNITED STATES OF AMERICA, } ss:
District of Porto Rico, }

I hereby certify and return that I have served the annexed citation on the therein named José Perez y Fernandez by handing to and leaving a true and correct copy thereof with F. H. Dexter, attorney for plaintiff in error personally at San Juan, P. R. in said district on the 5th day of March A. D., 1902.

(Signed) E. S. WILSON,
U. S. Marshal.

And afterwards, to wit, on the 10th day of March, 1902, there was entered on the chancery order book of the court aforesaid in this cause a certain opinion which said opinion is in the words and figures following, to wit:

86 In the District Court of the United States for Porto Rico.

MARCH 10, 1902.

JOSÉ PEREZ Y FERNANDEZ }
vs. }
JOSÉ ANTONIO FERNANDEZ Y PEREZ. }

Opinion.

The defendant, José A. Fernandez, asks the bond tendered by him herein on February 24th, 1902, be approved and that his writ of error to the United States Supreme Court be held to operate as a supersedeas, suspending the collection of the judgment until the determination of the appeal. The plaintiff moves to vacate the supersedeas sought to be obtained and for an order granting execution upon the judgment.

If the writ of error which the defendant has sued out does not operate as a supersedeas, then the motion to vacate is unnecessary.

Section 1007 of the Revised Statutes of the United States provides that if a defendant desires to stay process upon a judgment he must serve his writ of error by lodging a copy of it in the clerk's office for the adverse party and giving bond within sixty days after the rendition of the judgment or afterward by permission of a judge of the appellate court. He must do these two things within said time, the only qualification being that having served his writ of error within the time he may give the security after the lapse of the sixty days provided a justice of the appellate court gives leave to do so.

The verdict was returned on December 12, 1901. The motion for a new trial was overruled and judgment entered upon the same day. The defendant, by an order, obtained time until January 15, 1902, to file a bill of exceptions. This was extended until February 1, 1902, by an order made in chambers on January 13th, 1902, by virtue of a stipulation of the parties. At the same time upon the defendant's motion, but not by consent, the amount of a supersedeas bond, that he proposed to give, was fixed at ten thousand dollars.

87 January 29th, 1902, a stipulation of the parties was filed agreeing to a further extension of time to file a bill of exceptions, to wit, until February 5th, 1902, and an order to this effect was made in chambers. Upon the last named date the bill was approved and filed.

February 11th, 1902, a petition for a writ of error was filed and *it* allowed. An appeal bond in the sum aforesaid was then presented by the defendant; the plaintiff filed written objections to the sufficiency of the sureties and time was given until February 24, 1902, to show the sufficiency of the same or to give a new bond. Upon the day last named the defendant presented a new bond, and made the motion now under consideration. No writ of error was ever served or lodged in the clerk's office until March 5th, 1902, some 83 days after the judgment.

The court is disposed to allow the writ to operate as a supersedeas, but has been unable, after a diligent examination of authorities, to see its way to do so.

The supersedeas is by a statutory provision and a strict compliance with it is necessary.

The service of the writ of error within sixty days from the rendition of the judgment is an indispensable requisite to its operation as a supersedeas. The court has no discretion in the matter. It is required by the statute. It is a compliance with its provisions that makes the writ so operate. If the necessary steps are taken the writ becomes *per se* a supersedeas. The latter is an incident of it if there is a compliance with the provisions of the statute.

The lodging of a copy of the writ in the clerk's office within ten days after the judgment was required by the judiciary act of 1789 in order that the writ might operate as a supersedeas.

Railroad Company *vs.* Harris, 7 Wall., 574.

By the act of 1872 the time was extended to sixty days.

Kitchen *vs.* Randolph, 3 Otto, 86.

The proper justice can give indulgence as to giving the security, but not as to the service of the writ; as to it the party must be prompt. The writ of error removes the case to the appellate

88 court; it is jurisdictional, while the citation notifies the adverse party that it has been done. It is a matter of law whether the writ operates as a supersedeas, and not a matter within the court's discretion. It might, perhaps, make a *nunc pro tunc* order as to it that would be effective if the delay were owing to the

action of the court, or had been for its convenience; but this is not the case.

The court has considered if by any stipulation or action of the parties there has been any waiver that would authorize it to sustain the defendants' motion; but none appears.

If the writ is not served nor the bond tendered within the sixty days, a party may, of course, still sue out his writ of error or appeal at any time within the appeal limit of time by giving bond for the costs, but the writ will in such case not operate as a supersedeas.

The bond in this case is approved, as of February 24th 1902, but it cannot operate as a supersedeas, and an order to this effect will be entered.

(Signed) WM. H. HOLT, *Judge*.

Endorsement: In the district court of the United States for Porto Rico. José Perez y Fernandez *vs.* José Antonio Fernandez y Perez Opinion. Filed clerk's office United States district court, March 10th, 1902 (Signed) Ricardo Nadal clerk of the court By H. H. Scoville, D. C.

89 And afterwards, to wit, on the last day aforesaid, there was entered in the chancery order book of the court aforesaid in this cause a certain order which said order is in the words and figures following, to wit:

In the District Court of the United States for Porto Rico.

MARCH 10TH, 1902.

Present: The Honorable Wm. H. Holt, judge.

JOSÉ PEREZ Y FERNANDEZ
vs.
JOSÉ ANTONIO FERNANDEZ Y PEREZ. } Order.

The bond heretofore tendered in this case is approved as of that date, to wit, February 24th, 1902, but the writ cannot operate as a supersedeas.

(Signed) WM. H. HOLT, *Judge*.

90 And afterwards to wit, on the last day aforesaid, there was filed by the plaintiff's assignee, through his attorney herein, in the clerk's office of the court, his certain præcipe for *for* execution which said præcipe is — the words and figures following, to wit:

Pracipe for Execution.

In the District Court of the United States for Porto Rico, Mayaguez.

JOSÉ PEREZ Y FERNANDEZ
vs.
JOSÉ ANTONIO FERNANDEZ Y PEREZ.

Clerk of the court:

Please issue execution at once against defendant, above named, José Antonio Fernandez y Perez, in favor of José B. Gonzales, assignee of plaintiff José Perez y Fernandez, to collect judgment and costs in the above entitled cause.

(Signed) F. H. DEXTER,
Attorney for Plaintiff's Assignee.

March 10—1902.

Endorsement: José Perez y Fernandez *vs.* José Antonio Fernandez. Præcipe for execution. Filed clerk's office United States district court, March 10th, 1902. (Signed) Ricardo Nadal, clerk of the court.

And afterwards, to wit, on the — —— there was issued out of the clerk's office aforesaid our writ of execution in this case directed to the marshal of this district and against the said defendant, which said writ is clothed in the words and figures following to wit:

91 THE UNITED STATES OF AMERICA, *District of Porto Rico,* } *ss:*

The President of the United States of America to the marshal of the district of Porto Rico, Greeting:

You are hereby commanded, that of the goods and chattels, and for want thereof, then of the lands and tenements of Jose Antonio Fernandez y Perez in your district, you cause to be made the sum of seven thousand dollars damages and eighty-seven dollars costs of suit, which, by the judgment of the district court of the United States for the district of Porto Rico, at the December term thereof, in the year 1901, Jose Perez y Fernandez recovered against the said Jose Antonio Fernandez y Perez with interest thereon from the 12th day of December A. D. 1901, until paid, together with the further sum of — costs of increase on said judgment; and also the costs that may accrue on this writ.

And have you the said monies in the said district court, before the judge thereof, at the city of San Juan, in said district, within sixty days from the date of this writ, to be paid to the persons entitled to receive the same. And have you then and there this writ.

Witness the Honorable William H. Holt, judge of the district court of the United States for Porto Rico, this tenth day of March

A. D. 1902, and in the 126th year of the Independence of the United States of America.

(Signed) RICARDO NADAL, *Clerk.*

92 And afterwards to wit; on the 24th day of March, 1902, there was filed by the defendants herein in the clerk's office of the court aforesaid in this cause their certain motion to quash execution and set aside judgment, which said motion is clothed in the words and figures following, to wit:

In the United States District Court in and for the District of Porto Rico.

José Perez y Fernandez, Plaintiff, *vs.* Jose Antonio Fernandez y Perez and Rafael Diaz Aguerria, Defendants.	Motion to Quash Execution and Set Aside Judgment.

Now comes Jose Antonio Fernandez y Perez, one of the defendants herein and moves the court to quash the execution and set aside the judgment entered in the above entitled cause, for the following reasons.

I. That the judgment entered in this cause against this defendant Jose Antonio Fernandez y Perez is invalid and void upon the face of the records in this cause, this being a suit against two defendants sued jointly and no dismissal or non-suit having been entered prior to the judgment in said case as to the other defendant Rafael Diaz Aguerria.

II. That the judgment entered in this cause against this defendant is invalid and void upon the face of records in this cause, in this, to wit: that the verdict of the jury "We the jury find for the plaintiff in the sum of $7000.00 damages" did not authorize or permit a judgment to be entered against one of two defendants, declared against in plaintiff's declaration, there having been no dismissal or non-suit asked for or entered as to the other defendant.

(Signed) HORTON & CORNWELL,
Attorneys for Jose Antonio Fernandez y Perez.

Endorsement: C. L. Entered Order Book page 96. José Perez y Fernandez *vs.* Jose Antonio Fernandez y Perez *et al.* Motion to quash execution and set aside judgment. Filed clerk's office United States district court, March 24th, 1902. Ricardo Nadal, clerk of the court. By (signed) H. H. Scoville, D. C.

93 And afterwards to wit on the last day aforesaid, there was filed by the defendants herein in the clerk's office of this court in this cause their certain notice of motion to quash execution and set aside judgment, which said notice is clothed in the words and figures following, to wit:

In the United States District Court in and for the District of Porto Rico.

JOSE PEREZ Y FERNANDEZ, P'tff, *vs.* JOSE ANTONIO FERNANDEZ Y PEREZ and Rafael Diaz Aguerria, D'f'd'ts.	Notice of Motion to Quash Execution and Set Aside Judgment.

To Frank H. Dexter, Esquire, attorney of record for José Perez y Fernandez, plaintiff in the above entitled action:

Please take notice that on Wednesday, the 26th day of March A. D. 1902, at 10 o'clock a. m. or as soon thereafter as can be heard the undersigned will move this court, at chambers in the city of San Juan for an order to quash the execution and to set aside the judgment entered in the above entitled cause for the following reasons:

I. That the judgment entered in this cause against this defendant Jose Antonio Fernandez y Perez is invalid and void upon the face of the record in this cause, this being a suit against two defendants sued jointly and no dismissal or non-suit having been entered prior to the judgment in said case as to the other defendant Rafael Diaz Aguerria.

II. That the judgment entered in this cause against this defendant is invalid and void upon the face of the records in this cause in this to wit: That the verdict of the jury "We the jury find for the plaintiff in the sum of $7000. damages" did not authorize or permit a judgment to be entered against one of the defendants declared against in plaintiff's declaration, there having been no dismissal or non-suit asked for or entered as to the other defendant.

(Signed) HORTON AND CORNWELL,
Attorneys for José Antonio Fernandez y Perez.

Endorsement: In the United States district court for Porto Rico. C. L. 70. Perez y Fernandez *vs.* Fernandez y Perez and Diaz Aguerria. Notice to counsel on motion to quash execution etc. Filed clerk's office United States district court March 24, 1902. (Signed) Ricardo Nadal clerk of the court.

94 And afterwards, to wit, on the 27th day of March, 1902, there was entered on the Mayaguez chancery order book of this court in this cause a certain entry which said entry is clothed in the words and figures following, to wit:

In the District Court of the United States for Porto Rico.

MARCH 27TH, 1902.

Present: The Honorable William H. Holt, judge.

JOSE PEREZ Y FERNANDEZ, Pl'tiff.
vs.
JOSE ANTONIO FERNANDEZ Y PEREZ and Rafael Diaz Aguerria, D'f'd'ts.
} On Motion to Quash Execution and Set Aside Judgment.

The defendant Jose Antonio Fernandez y Perez on this day at chambers called up his motion filed herein on March 24th, 1902 which is as follows, to wit:

Now comes Jose Antonio Fernandez y Perez, one of the defendants herein and moves the court to quash the execution and to set aside the judgment entered in the above entitled cause for the following reasons:

I. That the judgment entered in this cause against this defendant Jose Antonio Fernandez y Perez is invalid and void upon the face of the record, in this cause, this being a suit against two defendants jointly and no dismissal or non-suit having been entered prior to the judgment in said case as to the other defendant Rafael Diaz Aguerria.

II. That the judgment entered in this cause against this defendant is invalid and void upon the face of records in this cause, in this to wit: That the verdict of the jury "We the jury find for the plaintiff" in the sum of $7000. damages," did not authorize or permit a judgment to be entered against one of two defendants declared against in plaintiff's declaration there having been no dismissal or non-suit asked for or entered as to the other defendant.

(Signed) HORTON AND CORNWELL,
Attorneys for Jose Antonio Fernandez y Perez.

To which the plaintiff objected and the motion is submitted.

And afterwards to wit*h*, on the 2nd day of April 1902 there was entered upon the Mayaguez chancery order book in this cause a certain opinion herein which said opinion is in the words and figures following, to wit:

In the District Court of the United States for Porto Rico.

APRIL 2ND, 1902.

Present: The Honorable William H. Holt, judge.

JOSE PEREZ Y FERNANDEZ, Pl'tiff.
vs.
JOSE ANTONIO FERNANDEZ Y PEREZ and RAFAEL DIAZ Aguerria, D'f'd'ts.
} Opinion.

95 This is a motion, upon notice to the other side, to set aside a *a* judgment upon a verdict rendered at the December term 1901 of this court at Mayaguez, and to quash the execution

thereon. It is made at chambers, and after the expiration of the term. Each side has been heard. No grounds to quash the execution is presented save that the judgment should be disregarded or set aside. Not only has the term expired but a writ of error has been sued out and the case is now bound up in an appeal. It is elementary that a court has, after the expiration of the term, no power over its judgments. This rule is so well established that numerous citations of authorities is unnecessary. A judgment of a court, however conclusive, is during the term at which it is rendered, subject to its order. After the term is ended, however, it is beyond its control. If erroneous, it can be corrected only by an appeal. By the common law writ of error *coram vobis* some material matter that had been overlooked, as the death of a party before a trial or infancy without the appointment of a guardian, the coverture of a party or clerical error in the process, could be brought before the court. This is however now generally done by motion supported by affidavit, but if there be error on the part of the court rendering a judgment; error in its action, it cannot be reached by motion after the end of the term. It is then beyond its power.

104, Otto, 410,—Bronson *vs* Schulten.

If a judgment be void, as for want of jurisdiction, or because the court has exceeded his power, as for instance in a suit upon a note the debtor has been sent to the penitenciary, then it may subsequently to the term at which it was rendered, afford relief upon motion and hold it void. But this judgment is not void and the motion must be overruled. Such an order will be entered.

(Signed) WM. H. HOLT, *Judge.*

And afterwards, to wit, on the same day last aforesaid there was entered upon the Mayaguez chancery order book of this court in this cause a certain order herein which said order is in the words and figures following, to wit:

In accordance with the foregoing opinion the motion to set aside judgment and quash execution is now over-ruled.

96 UNITED STATES OF AMERICA, *District of Porto Rico,* } *ss:*

In the District Court of the United States for the District of Porto Rico.

JOSE PEREZ Y FERNANDEZ, Plaintiff, *vs.* JOSE ANTONIO FERNANDEZ Y PEREZ and Rafael Diaz Aguerria, Defendants. } C. L. 70. Mayaguez. Trespass on the Case for Wrongful Attachment.

I, Ricardo Nadal, clerk of the district court of the United States in and for the district of Porto Rico, do hereby certify the foregoing ninety five type-written pages, numbered from 1 to 95, inclusive, to

be a full, true and correct copy of the record and proceedings in the above and therein entitled cause as the same remains of recor- and on file in the office of the clerk of said court, and that the same constitutes the return to the annexed writ of error.

In testimony whereof, I have hereunto set my hand and affixed the seal of said district court this third day of April, A. D. 1902.

[Seal United States District Court for the District of Porto Rico.]

RICARDO NADAL,
Clerk United States District Court of Porto Rico.

96½ [Endorsed:] José Antonio Fernandez y Perez and Rafael Diaz Aguerria appellants in error *vs.* José Perez y Fernandez appellee.

Endorsed on cover: File No. 18,527. Porto Rico D. C. U. S. Term No. 323. Jose Antonio Fernandez y Perez, plaintiff in error, *vs.* Jose Perez y Fernandez. Filed May 5th, 1902.